

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

W 19b

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Commission Action



STAFF REPORT: MATERIAL AMENDMENT

APPLICATION NUMBER: A-5-RPV-02-324-A5

APPLICANT: Long Point Development, LLC

AGENTS: Michael Hardisty, Timi Hallem

PROJECT LOCATION: 6610 Palos Verdes Drive South, Rancho Palos Verdes, Los Angeles County

DESCRIPTION OF PROJECT ORIGINALLY APPROVED:

Construction of a 582 room resort: 400 hotel rooms (360 rooms in one structure plus 20 free-standing 2-room bungalows) and 82 other free-standing units consisting of 50 three-keyed "casitas" and 32 "villas", golf practice facility, club house, conference center, 4 restaurants, related commercial uses, public trails; 100 public parking spaces, open space and 784,550 cubic yards of grading on a 102.1 acre site. The proposed project includes Tentative Parcel Map No. 26073, which creates four parcels.

DESCRIPTION OF CURRENT AMENDMENT:

A-5-RPV-02-324-A5. Conversion of 106 guestrooms in a 582-room resort hotel into limited-occupancy resort condominiums, which will be operated by the hotel. The conversion would create 70 individual condominium units, which would include the twenty bungalows on the property, each of which be sold as a unit containing two guestrooms. The remaining 66 guestrooms would include rooms and suites in the hotel proper combined into 50 separate condominium units.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **DENIAL** of the proposal, because with this high proportion of units in private ownership, the proposal is inconsistent with the designation of this property in the LCP for visitor serving uses, with the access corridor policies of the certified LCP, with the public access and recreation policies of the Coastal Act, specifically Sections 30210, 30221 and 30222, and with the Commission's action on this permit on appeal when it approved a resort hotel that was to be operated as a public accommodation. In August, 2005 the Commission approved an amendment that allowed the conversion of 82 units (50 three-keyed "casitas" and 32 "villas") into 82 separate condominiums (with a total of 182 guestrooms), enabling each of the 82 units to be sold as an independently-owned

condominium, operated by the hotel as a limited-occupancy resort condominium. The present change would increase the number of guestrooms subject to this program from 182 to a total of 288 guestrooms in 152 "units" of one to three guestrooms each, leaving 294 (out of 582) resort guestrooms under the ownership of the hotel. The conversion of a substantial proportion (almost 50%) of the guestrooms in the hotel to private ownership represents the potential loss of a significant visitor serving accommodation and, potentially, an increasingly difficult commitment of State and City resources to enforcement of a form of hotel management that is untested in the long term. Given the scarcity of commercial overnight accommodations on the California coastline, the staff cannot recommend approval of this conversion, which would result in private ownership of 288 out of the 582 guestrooms in the resort.

Description of Amendment 1. (Withdrawn on June 21, 2005)

A-5-RPV-02-324-A1 Convert 70 units (106 guest rooms) to condominium ownership.

Description of Amendment 2 (approved September 27, 2005.)

A-5-RPV-02-324-A2. Modifications to the project site plan including a reduction of the hotel building footprint, and relocation of the specialty restaurant, and adjustment of the boundary of the bluff top "Habitat Enhancement Area," Zone B, an "80 foot wide Coastal Bluff Scrub and Coastal Sage Scrub Zone" adjacent to the top of the bluff. The applicant proposed to provide a narrower buffer adjacent to a public parking lot at the northwest corner of the property, and adjacent to an emergency access road. The applicant proposed to balance these reductions in width by increasing the width of Zone B in areas adjacent to these modified areas to up to 150 feet. The applicant also proposed to widen an existing drainage in the southeast corner of the property in order to protect existing willows.

Description of Amendment 3 (approved August 9, 2005.)

A-5-RPV-02-324-A3. Authorize the conversion of 82 units (50 three-keyed "casitas" and 32 "villas") into 82 separate condominiums (with a total of 182 guestrooms), enabling each of the 82 units to be sold as an independently owned condominium, which would be operated by the hotel as limited occupancy resort condominiums.

Description of Amendment 4 (approved November 17, 2005.)

A-5-RPV-02-324-A4. Amend A-5-RPV-02-324 in order to provide funding to partially offset the Commission's costs for its consideration of the permit application and condition compliance. This funding pays for additional temporary Coastal Commission personnel so that a team of permanent Commission staff can expedite the review of documents that the permit requires the applicant to record, after receiving Commission staff approval, prior to issuance of documents finalizing amendment A-5 RPV-02-324-A4.

Description of Amendment 6 (Tentatively Scheduled for May 2006; Postponed).

A-5-RPV-02-324-A6. Amendment to modify the hotel site plan, including reducing the hotel building footprint, reducing the number of villa buildings, but retaining the same number of units in the villa complex, eliminating the parking structure, reconfiguring the surface parking area, and eliminating the two tennis courts. The applicant also proposes to modify the golf amenity from a 3-hole practice facility to a 9-hole short game golf academy, and proposes changes in dimensions, surface treatment, and locations of some trails.

SUBSTANTIVE FILE DOCUMENTS.

1. City of Rancho Palos Verdes, Certified Local Coastal Program, 1981
2. City of Rancho Palos Verdes, Certified Local Coastal Program, Amendment 1-89
3. City of Rancho Palos Verdes, Coastal Development Permit No. 166. (Appealed)
4. City of Rancho Palos Verdes, Grading Permit No. 2229
5. City of Rancho Palos Verdes, Variance No. 489
6. City of Rancho Palos Verdes, Conditional Use Permit # 21, Revisions A, B and C, September 2004 through October, 2005
7. City of Rancho Palos Verdes, Long Point (Terranea) Resort Hotel Project: Zone 2006-00036 (Revision 'D' to CUP 215, *et. al.*) March 21, 2006
8. City of Rancho Palos Verdes, Tentative Parcel Map No. 26073, as amended October, 2005 to permit four parcels and 152 condominium units Coastal Development Permit A-5-RPV-02-324.
9. "Declaration of Restrictions," Draft Agreement between the City of Rancho Palos Verdes and the Applicant regarding the Management and Operation of the individually owned units
10. Declaration of Restrictions agreement A5-RPV-02-324-A3
11. Coastal Development Permit No. A-5-RPV-91-46 (York Assoc.)
12. Coastal Development Permit No. 5-96-282 (Seaview Development, Hermosa Beach);
13. Newport Coast Certified Local Coastal Program
14. Coastal Development Permit 6-92-203-A4 (KSL Enterprises.)

LOCAL APPROVALS RECEIVED:

1. Tentative Parcel Map No. 26703
2. Conditional Use Permit No. 21 Revisions A, B, C, and D.

PROCEDURAL NOTE:

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for protecting a coastal resource or coastal access.

The applicant is requesting a change in the ownership structure and legal status of some the originally approved 582-guestroom resort to allow the sale of 70 independently owned units in addition to those already approved for sale by the Commission. Twenty units (the bungalows) would each include two guest rooms. The remaining 50 units (66 guestrooms) would include rooms and suites located within the hotel proper. In August, 2005 the Commission approved an amendment that allowed the conversion of 82 units (50 three-keyed "casitas" and 32 "villas") into 82 separate condominiums (with a total of 182 guestrooms), enabling each of the 82 units to be sold as an independently-owned condominiums, which would be operated by the hotel as limited-occupancy resort condominiums. The present change would increase the number of guestrooms subject to this program from 182 to a total of 288 guestrooms in 152 "units" of one to three guestrooms each, leaving 294 hotel guest rooms under the ownership of the hotel. While buyers would retain the right to manage the booking of their units, all units would be operated by the hotel, and when not in use by the owner or the owner's customers, would be available for booking by the hotel. The applicant proposes a deed restriction on the units subject to the sale identical to those imposed by the Commission on amendment A3 (Exhibit 4). (The adopted conditions are provided in Appendix A). The applicant proposes conditions to comply with this requirement. The application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen the intent of the previously approved permit. The findings and special conditions of coastal development permit A-5-RPV-02-324 anticipated that the Commission would accept an amendment to allow the sale of 82 independently owned units (casitas and villas) encompassing 182 guestrooms, and such an amendment was approved as A-5-RPV-02-324-A3. However, the findings on both the permit and the amendment implied that the total number of independently owned units in the hotel would be limited, and indicated that any further change in the number of units to be sold would require Commission review.

STANDARD OF REVIEW:

The standard of review of a permit issued by the Commission on appeal – or, as in this case, an amendment thereto – is the certified LCP, and, when it is located between the sea and the first public road paralleling the sea, the access and recreation policies of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends the Commission **DENY** the amendment request.

MOTION: *I move that the Commission approve proposed amendment A5 to Coastal Development Permit No. A-5-RPV-02-324 for the development as proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT AMENDMENT:

The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of the certified LCP or the public access and recreation policies in Chapter 3 of the Coastal Act. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Location, Description and History

The project site is located at 6610 Palos Verdes Dr. South, in the City of Rancho Palos Verdes (Exhibit #1). The site forms a triangular peninsula that is seaward of Palos Verdes Drive South at the location of the former Marineland Aquatic Park. The site consists of flat graded areas and steep cliffs that support coastal bluff scrub habitat areas for the endangered El Segundo blue butterfly. The site has some existing development including large surface parking lots, vacant buildings, and the Catalina Room banquet facility. Urgency Ordinances adopted by the Rancho Palos Verdes City Council upon the closure of Marineland established a requirement for coastal access and public parking on the Long Point property. The parking and coastal access presently remains open during daytime hours: from 8:30 a.m. to 4:00 p.m. In late 1991, the Commission approved a 450-room hotel conference center and nine-hole golf course on the site, which were never built (A-5-RPV-91-046).

In June 2003, the Commission approved the construction of a 582-room hotel on the site. The hotel consisted of one 360-room structure and four clusters of freestanding small structures, termed "casitas", "villas," and "bungalows." The villas were large units, which the applicant expected to rent as one guestroom; the bungalows and casitas contained, respectively two and, three separate guestrooms within them. The 360 rooms within the hotel include some suites that could be further subdivided into additional guestrooms. (The applicant has used "Key", the industry term of art, to denote a guestroom in this application.) In addition to the hotel rooms, the applicant proposed to maintain, and the permit authorizes, an existing bluff top restaurant, and to provide other amenities including two restaurants, a golf facility, a conference facility, a spa, tennis courts, a pool on an existing bluff face bench, and trails. As a condition of both the City approval and the coastal development permit, the applicant was required to provide public bluff top trails, 100 public parking spaces, to preserve two long-existing trails to the beach over the southernmost bluff face, and to grade one of them, that had been used as a maintenance road, to provide handicapped access to the beach for the public and hotel guests. Restaurants and other facilities on the property (with the exception of the pools) were required by both the City and the Commission to be open to the public.

The applicant has applied for six amendments. The applicant withdrew the first amendment, amendment A-5-RPV-02-324-A1, in June 2005 pending discussions with the City and the Coastal Commission staff concerning the management of the units and procedural matters. Amendment A1 was a request to convert 70 units to condominium units. . The Commission has approved three amendments. The first amendment approved (A3) allowed 82 units (with a total of 182 guestrooms), to be converted to condominium units, enabling each of the 82 units to be sold as a limited occupancy resort condominium, which would be operated by the hotel. The City and the applicant entered into an agreement as part of the Conditional Use Permit conditions, that the independently owned units shall be operated as part of the hotel and that buyers will be limited in terms of the maximum length of a stay and in the number of days that they can occupy their units per year. The Commission revised these requirements and incorporated them into its special conditions of approval of amendment A-5-RPV-02-324-A3. A second amendment, A-5-RPV-02-324-A2 (processed after amendment A3) changed the site plan, changing the location of a spa and other structures, and adjusting the width of an 80-foot wide Habitat Enhancement Area located between the hotel buildings and the edge of the bluff. The adjustment allowed the Habitat Enhancement Area to be as narrow as 40 feet in three locations to accommodate two fire access roads and the enlarged parking lot at the Pt. Vicente Fishing Access. To keep the Habitat Enhancement Area the same size, the revised plan shows a much wider buffer between the westerly casitas and the bluff top. This action substituted new site plans for the exhibits cited in the original approval. A third amendment, A-5-RPV-02-324-A4, allowed the applicant to pay for expedited processing of the documents it proposed to Commission staff for recordation pursuant to the permit conditions.

Two amendments are scheduled for the Commission's May, 2006 meeting or in the near future. This amendment, A-5-RPV-02-324-A5, would increase the number of for-sale units by 70 units (20 bungalows and 50 units in the main hotel) accommodating 106 guestrooms

(including 66 in the main hotel). The applicant's description of the limited occupancy condominium hotel, and how it would function is attached as Exhibit 6. The second pending amendment, A-5-RPV-02-324-A6, would make further changes in the site plan, re-design some trails, and substitute a nine-hole golf course for the golf practice facility. As part of amendment A-6, staff is recommending that Special Conditions 2 and 3, which require, respectively certain areas to be restricted for public access and for habitat protection be modified to reflect the revisions to the site plan that have occurred since the Commission's 2002 approval.

B. Public Access and Recreation

The Commission's review of the proposed project is governed by the policies of the certified Local Coastal Program. Because it is located between the first public road and the sea, Section 30604 (c) of the Coastal Act, requires that the Commission as part of its approval, find that it is also consistent with the public access and recreation policies of the Coastal Act, which include the following policies:

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

The certified Local Coastal Program reflects the linear nature of the Rancho Palos Verdes coastal zone, which is a row of steep bluffs overlooking the ocean, a row of bluff top lots,

and a major road, Palos Verdes Drive South and West that provides access to those bluff top lots and is also the inner coastal zone boundary. The LCP establishes “Access Corridors”, “Natural Corridors”, and “Hazard Corridors” along this bluff top.

The access section of the Corridors Element of the LCP establishes a policy to develop combined access corridors—the road, joined to lateral loops, providing access to both pedestrian and bicycle trails that follow the bluff and then connect with historic trails that lead down the bluffs to the beach. The LCP requires as many bluff top public access trails as possible, and dedication of historic trails down the face of the cliffs. Roads in new developments are to remain public. The City’s objective, except where slide conditions may make it unsafe, is to connect the entire city with a jogging path and a bicycle trail. The LCP described this site, at the time developed with Marineland, a nationally recognized oceanarium that attracted thousands of visitors each year, as the site of a 2300 car parking lot that could provide parking for visitors who intended to hike or bike on these trails.

The project is also governed by the LCP policies that establish natural corridors, to be protected and developed, if possible, with trails and other public access ways. The Corridors (Natural Corridor) Element of the certified LUP states:

Natural Corridors should, where desirable and feasible, be utilized as pedestrian access corridors providing access to the coastal bluff area and public use areas, and should have appropriate design treatment to insure pedestrian safety as well as retention and enhancement of the natural features.

Project description – project features proposed to carry out the public access policies of the LCP.

This project, as approved by both the City and the Commission, will provide public streets, parking areas, which are set back from the bluff, and public trails to and along the top of the bluff, and in two locations where present trails exist, down the bluff face. It will provide one hundred new public parking spaces to serve these facilities – fifty adjacent to an existing public beach access trail (the Point Vicente Fishing access) and fifty more spaces in a second lot at the top of an old supply road that leads down the bluff face. The developer proposed to improve the road as a handicapped accessible ramp leading to a public snack bar, view area and guest swimming pool located on a bench that Marineland had excavated on the bluff face. The project is required to provide major public access facilities, comparable to the two developed public bluff top parks found in Rancho Palos Verdes, Abalone Cove Park, and the Point Vicente Park and to a private development that provides trails and public viewing areas, the Trump (Ocean Trails) Golf Course on the eastern end of the City. Most other bluff top sites in Rancho Palos Verdes are developed with homes, or provide a narrow strip of public land just seaward of the road with no public serving amenities, or like Shoreline Park, an undeveloped park at the southern end of the City, can be reached only on foot, by steep trails. Only this site, the Point Vicente Park, Abalone Cove, and the Trump Golf Course provide parking areas, restrooms, and places to eat or picnic.

Land use provisions of the LCP addressing commercial recreation and this site

In its corridors section and in its section on Subregion 2, the LCP identifies this site as crucial to the City's public access policy, as the hub of the pedestrian and bike trail system, the location that can accommodate recreational users and provide support parking to beach goers and trails users. The LCP states that this site should be limited to commercial recreation.

The LCP addresses land use in detailed "Subregional Plans" which integrate land uses and the constraints found in the Hazards, View Corridor, Natural Resources, and Natural Corridors sections of the plan as they apply to particular geographic areas (subregions) of the City's coastal zone. The Subregion 2 section of the LCP addresses the former Marineland Aquatic Park property, which is the site of the present application as well as a vacant site and Point Vicente Park, Lighthouse and Fishing Access. The Subregion 2 Section of the LUP states in part:

Any future development on the site will require City approval in the form of a Conditional Use Permit. Compatible uses could include those of a Commercial Recreational nature, visitor-oriented, such as additional oceanarium attractions, retail facilities, recreation uses, motel, convention facility, restaurants, museum, etc. Those considered not compatible are uses of a "carnival" nature.

The project site is the only designated commercial/recreational (CR) site in the City's certified LCP. Commercial recreation sites are not common in the Rancho Palos Verdes coastal zone. The LCP designated this site and a small site with a "floating retail" designation at a seven-acre school site¹ on what is now the Trump Golf Course for commercial recreation. The LCP provides that residentially zoned lots can develop with a commercial recreation use if a conditional use permit is granted, for example, the 272 acre Trump Golf Course site is actually designated for residential use, although partially developed with a commercial recreation use. In 1980 when the LCP was first certified, there were four large buildable vacant sites in Rancho Palos Verdes. Only this one was designated for commercial recreation. Two were subdivided for residential uses. The other, the 261-acre site now developed with the Trump National Golf Course, was designated for residential use, but allowed to develop with both commercial and residential uses with a conditional use permit.

To preserve this potential resource, the LCP, updated in 1989 after the closing of Marineland, does not allow commercial recreation (CR) designated lots to be developed with a residential use. Section 17.24 of the certified LCP² states in part:

Chapter 17.24 Commercial Recreation District.

17.24.010 Purpose. *This district permits those entertainment and recreational activities which are of a commercial nature.*

¹ (Then operated by a specialty vegetable grower.)

² Now renumbered and expanded as section 17.22.030 of the Municipal Code

17.24.020 Uses and Development Conditionally Permitted. *The following uses may be permitted in the (CR) Commercial Recreational District subject to approval of a conditional use permit:*

- a. *Any new or reestablished use which is of an entertainment, visitor serving or recreational nature, including but not limited to a resort/conference hotel, restaurant, limited theme retail, tennis court, golf course and other entertainment and banquet facilities compatible with existing uses and the surrounding area. Such use, if located within the coastal specific plan district, shall be required to provide public access to and along the bluff and coastline;*
- b. *Grower and produce stands, wholesale plant nurseries, and similar commercial/agricultural uses.*
- c. *Commercial antenna.*
- d. *Other uses determined by the director to be similar to the use described in section 17.24.020(a) with the exception of the following.*
 1. *Amusement Park.*

17.24.30 Operation and maintenance. *All uses shall be operated and maintained in a way that does not create a public nuisance.*

- a. *Buildings or structures that are not in use or operation may only be secured in a manner approved by the director of environmental services.*
- b. *Routine landscaping and ground maintenance shall continue whether or not the use is currently in operation or open to the public.*
- c. *Any use located within the coastal zone shall be operated and/or maintained to preserve public coastal access whether or not the use is current operation or open to the public. Such access may be restricted on a temporary basis with the approval of the director of environmental services, if necessary to protect the public health, safety, and welfare. Parking requirements for any proposed development shall be as specified in chapter 17.44. Ten percent of any required parking shall be designated as public parking for coastal access as indicated by the coastal specific plan (p. U-18 Policy No. 3).*

The certified LCP designates the former Marineland site as Commercial/Recreational and requires that future development shall be visitor serving or recreational, or agricultural. The City has approved the proposed condominiums as a conditional use consistent with the LCP, but it has attempted to assure consistency with the land use restrictions cited above by imposing conditions on its conditional use permit that require these condominiums to be operated by the resort as a hotel and that limit the length of stay of

owners (and hotel guests) to twenty-nine consecutive days and to a total of two months in any year, with one exception. Owners of the villas, while limited to 29 consecutive days in any stay, with a seven-day interval between stays, may use their units up to three months in any year. The applicant has provided draft deed restrictions that would carry out these requirements.

The standard of review for the Commission on an amendment to an approved permit in an LCP-certified area is consistency with both the LCP and, in this location, the access, and recreation policies of the Coastal Act.

Coastal Act provisions applicable to the site.

In addition, to the provisions of the LCP, the Coastal Act provides that visitor and recreation serving facilities be given priority over other private uses, and that such visitor-serving facilities include visitor-serving uses such as hotels.

This project was approved as a hotel, which is a priority use under Section 30222 of the Coastal Act. The question before the Commission in this amendment is whether the amendment allowing the conversion of additional guestrooms to private condominium ownership is consistent with the LCP and with the access and recreation policies of the Coastal Act. The question comes down to whether a hotel with approximately half of its guestrooms (rooms and suites) held privately can, in the long term, function as a public accommodation.

Permit history. Statewide, the Commission has considered at least ten such proposals in recent years, including 82 units (182 guestrooms) of this hotel, and most recently, in March 2006, the Commission considered a proposal to convert a 130-unit hotel in Encinitas to limited use condominiums, and allowed the applicant to convert 100 of its units. In each proposal the Commission has considered how, given the particulars of each project, it can assure that the hotel continues to serve as a public accommodation. In this case, as in other similar cases the Commission has been concerned with the consequences of the conversion. In this case, the Commission must consider both the statewide implications and the relationship to the LCP. As described above, the Rancho Palos Verdes LCP requires this site to be developed for Commercial Recreation (unless it is retained in agriculture). The Coastal Act gives priority to visitor serving recreation, which the City of Rancho Palos Verdes has achieved by reserving this particular site for commercial recreation, and this development has been approved as a hotel providing many facilities open to the general public, from trails along the bluffs, to restaurants and a coffee shops to a spa to luxury hotel rooms.

The first question that the Commission must answer is: "Is the change consistent with long term operation of the site as a hotel" and therefore consistent with the Coastal Act and with the LCP? The Commission found that this was the case when it allowed about a third of the guestrooms to convert to private ownership.

The presently proposed project would allow about half the guestrooms (or rentable spaces) to be owned privately. Assuming that a hotel books about 80 percent of its rooms during the busy season, if half the owners are also present, prospective visitors who would occupy 5 percent of the rooms will be turned away. This means that if half the owners are present, as may be the case during the busy season, the hotel will be nearing capacity.

In response to this issue, the applicant has provided statistics from other hotel projects that have a significant fraction of the units in private ownership. Based on these numbers, the applicant asserts that at any given time, most units in “investor owned” hotels are available for rental by the public. The applicant asserts that the high availability is a result of owners’ interest in income from the units. The applicant also provides the following information concerning annual owner occupancy in other resorts that its management company, Destination Development, operates:

Percent Owner Occupancy In Condominium Hotels Operated By Same Manager (Destination Development)				
Condominium Hotel	Location	Owner Occupancy (%)		
		2003	2004	Average
La Quinta Resort	La Quinta, CA	2.0%	1.9%	2.0%
Teton Mountain Lodge	Teton Village, WY	2.5%	2.3%	2.4%
Mountain Lodge at Telluride	Telluride, CO	3.8%	3.4%	3.6%
The Gant	Aspen, CO	9.9%	9.6%	9.7%
Seascape	Aptos, CA	7.1%	n/a	7.1%
Average		5.1%	4.3%	5.0%

The Commission notes that many of these units are in relatively remote communities. Secondly, the annual figure does not include corrections reflecting higher demand in vacation months: “spring break” and summertime. At times of high demand, high owner occupancy can exclude members of the general public. Further, this project, now identified as the Terranea Resort Hotel is located in a suburb of an urban area, where there is a demand for housing within commuting distance of employment centers, shopping and entertainment. This hotel is located in an urban area where there is a greater likelihood that owners would want to stay at the hotel year around. Third, in some of the studies of occupancy that the staff was provided when it reviewed the KSL proposal for a 130 unit hotel conversion in Encinitas, the reports speculated that the units were too small to be used as full time homes, some times 7-800 square feet. In this case, in the Terranea Resort, the units are larger--between 1800 and 2300 square feet, as large as or larger than the average residential unit in the greater Los Angeles area, although smaller than the typical luxury unit in the area.

The applicant counters that in the three accommodations in beach communities, most of the rooms are available most of the time, providing the following statistics concerning occupancy: The applicant has provided a brief Economic Research Associates report that provides the following figures.

Owner occupancy in Condominium Hotels in California		
Project	Annual Owner Use Days Per Unit	Percent of Annual Capacity
Beach House, Hermosa Beach ³	14.5	4.0%
Beach House, Half Moon Bays	12.1	3.3%
Seascape, Santa Cruz	23.1	6.3%

Source: Kerkorian ERA, 2005, Provided by Applicant

When staff reviewed the website for these resorts staff found that they did advertise villas, cabins, “homes” and other accommodations similar to the units being converted as available to the public. It was clear that some of the homes marketed to individuals were in fact available to the public –the condo hotels are in operation elsewhere and the owners are marketing their units through the resorts for short term vacation use. The system appears to work as the applicant has described. What was not clear was how many of the units were available and how many had been withdrawn from the market, and neither the websites nor the research that the applicant has presented helped with this issue. Secondly, under the current proposal, one type of unit, the villas, will be able to be occupied by the owners for 90 days (with seven day interruptions), potentially most of the summer.

The Commission notes that the applicant provides summaries of statistics but does not provide the data on which the conclusion is based. The summary is based on annual use. Rancho Palos Verdes is foggy in the winter. Peak use seasons for resorts are summer, spring break, and to a lesser extent holidays. Annual figures do not show how many rooms would be available during peak times.

To address this issue, the applicant has provided a plan to manage the units as hotel rooms, which includes limitations on the lengths of stay for any visitor, owner or guest to 29 consecutive days⁴, retention of the key in the possession of the hotel and a ban on

³ In a report submitted to support the conversion of the KSL hotel in Encinitas to condominium use (6-92-203-A4), the owners of that project submitted similar information. The staff reports says: “To support this contention, the applicant has submitted documentation of use by owners of the Seaview Hotel in Hermosa Beach, a hotel previously approved by the Commission as a limited term occupancy condominium hotel (Ref. CDP Nos. 5-96-282/Seaview Hotel). According to this information, no more than 6% of the owners use their unit during the peak summer months with a yearly monthly range from a low of 1.5% in January to a high of 5.7% in August. The applicant indicates that “[t]he low rate of owner occupancy could stem from a number of factors, the most salient being that owners treat the hotel units as investments, and will realize higher dividends if their units are occupied to the greatest extent possible by regular guests” (Ref. “Response to Request for Information Regarding the Condominium Resort Hotel” from the applicant dated received September 13, 2005). (6-92-203-A4, Page 20.)

⁴ All visitors to the hotel, including condominium units would be limited to 29 days per visit. This limit would apply both to visitors and to owners. After 29 days, the visitor would have to vacate for no fewer than seven days before returning. Owners of “Casitas” and “Bungalows” and of the 50 suites units in the hotel building would be limited to using in their units for themselves or personal guests for not more than 60 days per year. Owners of “Villas” would also be limited to 29 days per stay, would be subject to the same 7 day rule, but would be allowed to use their units up to 90 days per year. According to the “Declaration of Restrictions” which the City has required to be recorded as part of its conditional use permit, when not being used by its owner, each such unit “shall be available as a Hotel accommodation and shall be managed by the Operator as set forth in Section 1.1 hereof [of the Declaration of Restrictions].” The Operator is the operator of the hotel. The applicant has provided a revised Declaration of Restrictions as part of this application, (Exhibit 3).

“personal” objects in the decor of the unit (standard furnishings and decorations). The Commission adopted conditions at the time of its approval of the first 82 units to memorialize this offer (See Appendix A, special conditions). In approving the amended conditional use permit in October 2005, the Rancho Palos Verdes City Council also adopted special conditions to the amended CUP that limited length of any stay to 29 days, that requires a seven day interval between use of the units, requires management by the hotel, and limits in this proposal owner’s use of the unit for themselves or personal guests, to sixty days a year. . The applicant indicates that this system of management will in its view assure that the hotel rooms are available as accommodations to the general public.

A second objection is that the presence of owners changes the equation.

1. While owners are legally committed by promises made by developers, they may not perceive the commitments as their own. Rather they may perceive the agreement as a formality to get through red tape having little applicability to them.
2. Owners may not perceive or understand operating their unit as a hotel room as being to their advantage.
3. Owners may not think it fair that there are restrictions on use of their homes.
4. The Commission has had an unsuccessful experience in attempting to regulate long-term use of units that were sold to individuals. In the 1970’s, developers provided several hundred “low and moderate income for-sale” units in southern Orange County to fulfill the requirements of Section 30213 of the Coastal Act, which prior to 1978 required the provision of housing for low and moderate-income individuals.

The developers provided the units subject to contracts with the owners that allowed the Commission and Orange County housing agency to control resale. The owners claimed that they believed they were buying the units, and did not believe or understand that their units must be sold at lower prices than their neighbors were receiving for their similar condominiums. Instead, buyers felt strongly that as owners, they should expect and hold the rights typically held by other owners, including the right to profit by a rising market. The third party supposed to be enforcing the contracts was a non-profit dissolved without passing on its obligation. The Commission discovered the sales several years after many of them had occurred. The Commission’s enforcement action had limited success.

Irrespective of the developers’ intentions, once the units are owned, there is a strong possibility that the individual owners will perceive and assert rights common to property owners. The SEC rules require that unless the units are marketed as homes, with little mention of a rental program, the units must be registered as securities (Exhibit 5). To avoid the expense of registering as securities, the initial materials do not mention the rental program or the limitations on occupancy. While two-stage disclosure of the rental program does not provide any new rights to owners who buy the condos and sign the agreements, it may add to genuine confusion on the part of some owners as to their obligations. When the individual condo owners control a near majority of units, the hotel will be perceived as providing an amenity to the owners, not a public accommodation. There will be pressure

to overlook or change rules that inconvenience owners or interfere with owners "rights". The requirements in the permit and the CC&Rs specific to this site protecting the public's rights to public accommodations in the hotel may be perceived as threatening to owners of units who reside there.

The applicant is engaged in marketing the first of the units by a system of "reservations". Staff examined the advertisements for the condominium units on the web. The advertisements were ambiguous. The Terranea website discussed "homes" that would be eligible for resort services. It did not define the for sale units as hotel accommodations.

The advertisement on the website does not explain that owners' occupancy would be limited. It does mention resort management, but unless a person knows what resort ownership means, the buyer could assume that he or she was buying the condominium as a residence. They refer to Ocean Villa and Ocean Casita "Living," and they explain that ownership "entitles" one to the resort services and amenities but not that it limits them in their use of the units. The website describes the villas and casitas without reference to the limitations. It states:

Rising from the magnificent bluffs on the wildly romantic Palos Verdes Peninsula comes Terranea Resort, an exquisite 400-room hotel featuring world-class amenities including a 25,000 sq ft spa, executive golf academy, meeting & event facility, gourmet dining and interactive children's center. **Terranea is now presenting a rare opportunity to own one of just 82 resort homes.** Enshrouded within the resort, this limited collection of Ocean Villa and Ocean Casita properties will provide owners an unparalleled seaside escape, as well as access to all of the amenities of this remarkable destination.

Situated within the gates of California's newest oceanfront luxury resort on the exclusive Palos Verdes peninsula, Terranea is hotel-serviced resort real estate at its absolute finest. Ownership of an Ocean Villa or Ocean Casita entitles one to indulge in all of the world-class services and amenities of the resort.

Ocean Villa Living

Poised on the resort's uppermost terrace is a rare collection of just 32 **private villas**. Three unique floor plans reveal 1850 to 2800 square feet of generous indoor living space, ranging from two bedroom and den to a double master three bedroom and den. Private courtyards and terraces magically bring the outdoors in, while spacious Great Rooms and gourmet kitchens make entertaining a must. Ownership, as expected, entitles one to the world-class services and amenities of Terranea.

Ocean Casita Living

Nestled along the resort's east and west facing bluffs with breathtaking views of the Pacific is a limited collection of 50 ocean casitas. **Each 3-bedroom resort home features 2000 square feet of indoor living space, yet offers the flexibility of smaller living spaces.** One master suite connects to two guest suites with private entries offering a variety of ways to enjoy the Ocean Casita. Ownership, as expected, entitles one to the world-class services and amenities of Terranea. (Emphasis added, source, Terranea Website, April 20, 2006.)

The website says that the resort includes a 400 room hotel –the number of rooms that exist on the 582 guestroom site without counting the 182 guestrooms already approved for conversion to condominiums in the villas and casitas. Newspaper ads also described the units as “homes”. Although the website does not describe the limitations, apparently when buyers actually visit the on-site show room, they are provided a “fact sheet” that explains the limitations that the City and the Commission have imposed on occupancy of the condominium units.

Securities and Exchange Commission (SEC)

Some of the gaps of the presentation to buyers may derive from a contradiction between the SEC rules regarding investors in securities and the applicant’s intention to sell the units for limited term occupancy and rental to the public. The Securities and Exchange Commission (SEC) has examined whether or not resort condominiums should be considered a security (Exhibit 5). The units are sold as commercial condominiums under a parcel map. The developer states that the units cannot be marketed based on earnings an owner can make off the units unless they are listed as securities, so the earnings from renting the units are not the reason to buy the unit. This means that renting the units and the income to be expected are not emphasized in promotional materials. The SEC concluded that condominium hotel rooms were not securities on the basis of rules that seem to conflict with the rules that the City and the Coastal Commission have imposed. The Commission and the City in response to these rules allowed the owner to market (rent out) their units themselves so they would not be in a rental pool, and subject to SEC rules. However, the SEC rules also require that the units be marketed as homes, with limited information on the rental and income-producing program. The SEC decision that the applicant provided enlarges on owners’ ability to use their unit as a home, on separation between the rental business and sales, and finds that “renting the units should be incidental.” This is not consistent with arguments that the developer is making (Exhibit 5, excerpt from SEC opinion). The applicant argues that features of ownership and limitations on occupancy, will make the units part of the hotel. (Exhibit 6)

Department of Real Estate (DRE)

As part of the process of “reserving a unit”, prospective owners pay a down payment and are provided a preliminary report from the Department of Real Estate (DRE). The preliminary report is a typical condominium report for a residential condominium development and does not address issues unique to this proposal, which are the limitations on owner occupancy and the availability of the units as public accommodations. The Department of Real Estate report does not discuss the limits on owners’ rights established in a limited occupancy resort condominium. Instead, it concentrates on issues more typical to condominiums: high-density living and governance by a board. Staff discussed this matter with the Department of Real Estate Managing Deputy Commissioner, Robert D. Gilmore. Mr. Gilmore explained that the Department of Real Estate is required to issues a *pro forma* report within a limited number of days after an application for condominium is received, but in the coastal zone the final report will not be issued until the coastal development permit is issued. The report is available to people who are reserving a unit and describes the typical imitations on condominium ownership

but doesn't describe the limitations of owning a limited occupancy condominium, although it does advise buyer to read the CC&Rs. The DRE concern is not the same as the Coastal Commission's – their concern is the viability of the development and the safety of the investments. In this case they perceive the viability of the development is dependent on the continued ability of the hotel to rent rooms that support the amenities that serve the condo owners. The DRE notes it does consider in its reports whether a condo hotel development would be successful as private condominiums if it failed as a hotel. The report on this development is not yet available.

The applicants indicate that the reason they are pressing for this second conversion is financial. Financing, they say, is difficult and construction costs have risen enormously, making it necessary for them to convert their units to condos. They state that in recent months, costs of building supplies and material have risen to such an extent that it is not possible for them to build a hotel that does not have a strong component of private owners.

The Commission acknowledges that the applicant indicates that the conversion is driven by its need to raise money to undertake construction in the atmosphere of rising costs. However, the Commission cannot make a long-term commitment of land use of a strategic public access site based on a temporary economic situation. There are alternatives, such as the construction of a less expensive structure, to reduce construction costs.

If as a result of the conversion, the units become private residences, the development will be inconsistent with the Commission's original approval, with the Coastal Act public recreation policies and with the land use designations that apply to this site. While the Commission supported the conversion of the initial 182 guestrooms, it cannot support conversion of 106 more guestrooms, including suites in the hotel building itself, because the change would potentially change the character of an accommodation that was approved because it conformed with the Coastal Act policies giving priority to visitor serving uses. The conversion of almost half the guestrooms to private ownership is inconsistent with sections 30221 and 30222 of the Coastal Act, the public access policies of the Coastal Act and with the land use designations and policies of the Rancho Palos Verdes certified Land Use Plan and must be denied.

C. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect, which the activity may have on the environment.

The project is located on the only parcel in the City of Rancho Palos Verdes designated for visitor serving commercial use. It is one of the last shoreline parcels of any significant size

in Los Angeles County that is available for development. Endangered species have been identified on the sea cliff on the site, potential geologic hazards have been investigated, and existing trails have been surveyed. Numerous studies have been undertaken concerning these issues, and the original permit and previous amendments have been conditioned to assure that the project will not have a significant adverse impact on coastal access or resources, and that it is consistent with the certified LCP policies relative to public access, recreation, habitat, and natural hazards.

The Commission in considering this application has taken note of the number of conversions of visitor-serving recreational developments to condominiums that it has approved statewide and the number of requests that are pending. While an individual development may be managed to assure a measure of continuing public use, the Commission must take note of the sheer number of requests for such conversions. If a third of California large coastal hotels convert to condos, and owners use their units for two weeks in the three-month summer season, almost 17 percent of the available nights in those hotels will not be available to the public. If a larger percentage of hotels increase, and users take advantage, under the present proposed restrictions, of a 29 day stay, almost a third of the hotel rooms subject to the programs could be occupied by private owners and their guests, and unavailable to the general public. While the rules of the game encourage rental of the units, they also reserve the right of owners to book the rooms themselves, diverting the hotel rooms by referral, to friends and acquaintances of the owners over the general public. When the Commission examines the potential cumulative impact of many such conversions, and the potentially increasing burden of enforcing multiple agreements with individual and unique arrangements, the possible cumulative impacts on availability of hotel rooms is potentially serious. Once the units have been converted and sold, they and their agreements are permanently committed to this system of managing public accommodations.

The Commission has considered the alternative of approval with a condition requiring similar restrictions to those imposed on the conversion of the initial 82 units. However, the Commission is unable to find that the cumulative effect of the conversion of almost half the guestrooms on the site to private ownerships would not add to the difficulty of retaining this site as a genuine commercial visitor serving facility, even with such conditions imposed. The Commission finds that there are feasible alternatives to conversion of additional units to condominium, such a constructing a smaller hotel, or using less expensive materials available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission cannot approve a project that would have significant impacts on the ability of the public to visit the coastline at a public hotel. The proposed development with the proposed amendment is not consistent with the access and public recreation policies of the Coastal Act and the policies of the certified LCP. There are other feasible mitigation measures or alternatives that would lessen significant adverse impacts the proposed change would have on public access and public recreation, which have not been presented to the Commission for detailed examination. Therefore, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative

and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

**APPENDIX A
STANDARD AND SPECIAL CONDITIONS
AS ADOPTED AUGUST 9 2005,**

STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the original application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

NOTE: IF THE **SPECIAL CONDITIONS** REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS). IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISTRICT OFFICE.

1. **DETAILED REVISED/FINAL PLANS**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and approval of the Executive Director, revised, detailed final plans for all development approved in this permit. The revised plans shall have been approved by the City of Rancho Palos Verdes, and shall conform to the requirements of the special conditions of this permit and indicate the final scale, location and elevation of all development. The plans shall include all development, including grading, staging, signage, structures, open

space, parks, drainage facilities, landscaping, trails and trail corridors (including their widths) and roads, and shall be consistent with the following criteria:

- 1) Bluff face protection. No development, with the exception of the following and grading necessary for the approved trails and drainage facilities, shall occur seaward of the Coastal Setback Line established in the certified Local Coastal Program (CSL).
 - (a) Revegetation/habitat enhancement consistent with the requirements of Special Conditions 7 and 8 below;
 - (b) Grading necessary for the ADA accessible public trail to the beach and Shoreline Access Ramp 1. Prior to the issuance of the coastal development permit, the City of Rancho Palos Verdes shall certify that both the "ADA Accessible Trail" and the connecting trail, to the beach level, Shoreline Access Ramp 1, comply with California Disability Accessibility Guidelines and/or the California Department of Parks and Recreation "Proposed Guidelines for Developed Outdoor Recreation Areas, Regulatory Negotiation Committee Report".
 - (c) Construction of a hotel pool, public restroom, public snack bar and a public viewing deck on an existing graded bench area on the eastern bluff face consistent with project plans submitted by the applicant dated July 15, 2002, also known as the "Lower Pool" facility.
 - (d) Construction of public trails and bike ways found in the Long Point Resort New Public Trails Plan shown in Exhibit 3;
 - (e) Installation of storm water conduits and Outfalls "B" and "C" shown on the S.U.S.M.P. Site Plan dated May 15, 2003;
 - (f) Removal of broken storm water drains identified for abandonment in "SUSMP" plan dated May 15, 2003; and
 - (g) Installation of the fence delineating areas where no grading is permitted to take place, consistent with Special Condition 5A below.

- 2) Pursuant to this requirement:
 - (a) The applicant shall eliminate all golf putting greens that are located seaward of the Coastal Setback Line.
 - (b) The applicant shall eliminate all grading for the hotel patio seaward of the Coastal Setback Line.

 - (c) The filter ("Stormfilter Unit 1") for Drainage "C", relocated inland of the Coastal Setback Line, shall be designed and built so as not to be visible from the beach or public trails.
 - (d) Drainage line "B" shown on the face of the bluff shall be installed by drilling so that no pipes are visible from the beach. Outfall "B" shall be relocated west of the proposed location, as needed, in order to

insure that the line can be drilled through competent bedrock material.

- (e) Drainage line "C" shall be installed by trenching to the beach, with vertical shoring used on the side walls to minimize disturbance.
 - (f) Beach level dissipaters and outlets shall be constructed using native stone and/or concrete colored to blend in with adjacent rock.
- 3) Bluff Edge and Coastal Setback Line (CSL). All final grading plans shall delineate the Coastal Setback Line as designated in the certified LCP and the upper edge of the bluff defined consistent with the California Code of Regulations Section 13577(h).
 - 4) Grading plans. Final grading plans shall be at a scale no less than 1:1200 (one inch to 100 feet). The grading plan shall include all trails, roads and final pads and shall conform to Condition 1A above.
 - 5) View Corridors and Height. The plans shall show the pad elevations, building envelopes and elevations of all structures. In order to protect public automobile and pedestrian views from Palos Verdes Drive South, and pedestrian views from public trails to and along the bluffs and from beaches, the heights and view corridor dimensions shall be consistent with all view corridor and height requirements imposed by the City of Rancho Palos Verdes in its August 28, 2002 action on the Conditional Use Permit No. 215 and Coastal Development Permit No. 166.
 - 6) Trails, Parks, and Streets. The plans shall show trails, parks, and streets consistent with specifications in Special Conditions 2A, B and D.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. PUBLIC ACCESS AND RECREATION/EASEMENT OFFERS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for public access and passive recreation over (i) the approved public trails and trail corridors and park areas generally described by the applicant in Page 5 of the Public Benefits Summary dated December 24, 2002 and the Site Grading Plan dated March 17, 2003 and (ii) the roads and parking lots described in Section D of this condition. The areas to be offered are listed below in Sections A, B and D of this condition and shown on Exhibits 3 and 4. Passive use, includes but is not limited to, picnicking,

viewing, sitting and hiking, but does not include organized sports. The easements shall include the right of the accepting agency to enter the easement areas and repair the trails or park in the event the applicant/owner fails to maintain or repair those facilities as determined by the Executive Director and/or the accepting agency.

The recorded document(s) shall include legal descriptions of both the permittee's entire parcel(s) and the easement areas. The recorded document(s) shall also reflect that development in the offered area is restricted as set forth in the Special Conditions of this permit. The offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California. The offer shall be binding on all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

A. Public Trails:

- (1) Long Point Bluff Top Trail: A 4-foot wide trail in a 10-foot wide corridor, extending from the northwestern corner of the site, adjacent to the Point Vicente Fishing Access, running parallel to the bluff edge and stopping at the southern tip of the ADA Compliant Trail and at the beginning of the existing shoreline access ramp that continues down to the beach.
- (2) Long Point Bluff Top Trail, Vanderlip Link: An ADA compliant, 6-foot wide trail in a 10-foot wide corridor that continues from the top of the ADA Compliant Trail described below in (5), running seaward of the Eastern Casitas, along the top of the bluff and connecting to the off-site Vanderlip Trail.
- (3) Marineland Trail: A mixed bicycle and pedestrian 10-foot wide trail in a 16-foot wide corridor, extending from the northwestern corner of the site, adjacent to the Point Vicente Fishing Access, running east, parallel and adjacent to Palos Verdes Drive South and terminating at the western edge of the resort's main entrance at the northeastern corner of the site.
- (4) Flowerfield trail: A 4-foot wide trail in a 10-foot wide corridor, extending from the northern end of the Resort Entry Trail, running east to the eastern edge of the property and continuing south and terminating on the southeast corner bluff top and connecting to the off-site Vanderlip Trail that continues down coast. This trail also connects to the Long Point Bluff Top Trail.
- (5) ADA-Compliant Coastal Access For Disabled: An ADA compliant 6-foot wide trail in a 100-foot corridor (area on bluff face identified for grading proposed switchbacks), extends from the resort public parking area, runs seaward, adjacent to the lower pool facility and terminates at the eastern shoreline access ramp, Shoreline Access Ramp 1.
- (6) Resort Entry Trail: A mixed bicycle and pedestrian 10-foot wide trail in a 16-foot wide corridor, extending from Palos Verdes Drive South, running

seaward along the western edge of the resort entry road, terminating at the hotel.

- (7) Shoreline Access Ramp 1: An ADA compliant, 4-foot wide ADA access way in a 10-foot wide corridor located at the southern tip of the ADA accessible trail described in (5) above and connecting the ADA accessible trail to the beach level at the southeastern corner of the project site.
- (8) Shoreline Access Ramp 2: A two-foot wide access way in a 10-foot wide corridor that provides shoreline access, connecting the Long Point Bluff-Top Trail to the beach at the southern tip of the property.

B. Parks:

- (1) Public Bluff Top Park: 2.2 Acre Park at the bluff edge adjacent to the Point Vicente Fishing Access in the northwestern portion of the site.
- (2) Beach: All areas owned by the applicant located between the beach level property line (mean high tide) and a line drawn approximately at the toe of the bluff.

C. The easement for public access and passive recreation required to be offered pursuant to this Special Condition over the areas listed in sections 2A and 2B shall be subject to the limitation that it not provide for such access or recreation in those areas during the period between one hour after sundown each day and one after before dawn the next day.

D. Public streets and parking areas.

- (1) The revised plans required by Special Condition 1 shall delineate all streets and parking areas of the project, including but not limited to, the following:
 - (a) The 50-car parking lot adjacent to the Point Vicente fishing access.
 - (b) The eastern parking lot in its entirety.
- (2) Streets, Roads and Public Parking Areas shall be provided as described on Tentative Parcel Map 26073, dated May, 2002, and Long Point Parking Study Plan dated July 11, 2002 and shall be for public street purposes including, but not limited to, pedestrian, bicycle and vehicular access.

E. Parking shall be provided as described in the applicant's Parking Study Plan dated July 11, 2002 and the applicant's submittal dated March 25, 2003. All streets and roads shall be open for use by the general public 24 hours per day.

F. Final design and Construction. The applicant shall construct the trails and park consistent with the specifications of this permit and of the City of Rancho Palos

Verdes. If the requirements of the City conflict with the requirements of this permit, the conditions of this permit shall prevail.

- (1) Consultation during design of the ADA accessible trail and Shoreline Access Ramp 1. Prior to providing final designs of the ADA accessible trails, the applicant shall consult with the California Department of Parks and Recreation and local mobility and disabled rights advocate groups to assure that the trail will be usable by members of such groups. If there is any disagreement between the permittee and the City of Rancho Palos Verdes concerning the appropriate design of the trail, the Executive Director shall resolve the dispute consistent with the need for public safety, the protection of resources, the provision of maximum access and the feasibility of any alternative.
- (2) Before occupancy of the hotel or restaurant and before opening the three-hole golf facility and driving range for play, the Executive Director shall certify in writing that the trails and park are complete, open and have been accepted by the City of Rancho Palos Verdes or other public or private nonprofit agency that is able to operate the trails consistent with this permit.
- (3) Fencing plan. Prior to issuance of a coastal development permit, the applicant shall prepare a fencing plan consistent with the public access policies of this permit for the review and approval of the Executive Director. With the exception of pool fences, fences shall be open appearing and no more than 42 inches high. Fencing shall be constructed of materials that allow views through them (such as glass panels or wrought iron). Use of fencing shall be minimized and shall be employed only for public safety and to protect habitat areas from disturbance.

G. Development Restrictions:

- (1) Public Trails and Bikeways
 - (a) The permittee shall not interfere with the public's right of access over the public trails or bikeways identified in Special Condition 2A, above, during their hours of operation (from one hour before dawn to one hour after sundown). The permittee may close the bluff edge and bluff face trails and prohibit access to those areas from one hour after sundown to one hour before dawn.
 - (b) No development, as defined in Section 30106 of the Coastal Act, shall occur within the access corridors identified above in Section A of this condition and as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for the following development: grading and construction necessary to construct and maintain the trails, bikeways and other development approved by

this permit, maintenance of development authorized by this permit that the Executive Director determines does not include significant grading or landform alteration; maintenance of public access and recreation facilities and appurtenances (e.g. signs, interpretive facilities, benches, safety fencing), planting and removal of vegetation consistent with the special conditions of this permit, underground utilities, drainage devices, and erosion control and repair provided that development that diminishes public access through any identified corridor shall be prohibited. This restriction shall apply to the following areas: The lands for public trails and bikeways, as depicted on final plans approved by the Executive Director but generally depicted on Long Point Resort, Public Benefits Summary, dated December 24, 2002 and Long Point Site Grading Plan, dated March 17, 2003.

(2) Public Park Areas

- (a) The permittee shall not interfere with the public's right of access over the park areas identified in Special Condition 2B, above, during their hours of operation (from one hour before dawn to one hour after sundown).
- (b) No development, as defined in Section 30106 of the Coastal Act, shall occur within the public park areas identified in Section B and as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for the following development: grading and construction necessary to construct the trails, public access and recreation facilities and appurtenances (e.g. signs, interpretive facilities, view points, benches, picnic tables, shade structures, safety fencing), vegetation planting and removal, underground utilities, drainage devices, and erosion control and repair provided that development that diminishes public access through any identified corridor shall be prohibited. This restriction shall apply to the following areas: The lands for public park areas, as depicted on final plans approved by the Executive Director but generally depicted on Long Point Resort, Public Benefits Summary, dated December 24, 2002 and Long Point Site Grading Plan, dated March 17, 2003.

(3) Public streets and parking areas

- (a) Long term or permanent physical obstruction of streets, roads and public parking areas in Tentative Parcel Map 26073, dated May 2002 and Parking Study Plan dated July 11, 2002 shall be prohibited. Public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public

(e.g. preferential parking districts, guests-only parking periods/permits, etc.) associated with any streets or public parking areas shall be prohibited.

(4) PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE A COASTAL DEVELOPMENT PERMIT FOR THIS PERMIT (NOI), the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an exhibit to the NOI, formal legal descriptions of the portions of the subject property affected by this Section G of this condition, as generally described above and shown on Exhibits 3 and 4 attached to the findings in support of approval of this permit.

H. The permittee shall undertake development in accordance with the approved final plans in Special Condition 2F(3). Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. HABITAT ENHANCEMENT AND PROTECTION/EASEMENT OFFERS

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for habitat restoration/enhancement and protection areas including: all areas listed below in Section A and as identified on the Long Point Resort Landscape Improvements Plan dated March 26 and 27, 2003 as depicted in Exhibits 6 and 7. The easement shall include the right of the accepting agency to enter the easement area and repair the habitat area if the permittee fails to maintain the restoration/enhancement and protection areas as required in Special Condition 7.

The recorded document(s) shall include legal descriptions of both the permittee's entire parcel(s) and the easement areas. The recorded document(s) shall also reflect that development in the offered area is restricted as set forth in the Special Conditions of this permit. The offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California. The offer shall be binding on all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

- (1) Habitat Restoration/Enhancement and Protection Areas: All areas seaward of the Coastal Setback Line (CSL), except for the subterranean areas identified for Drainages "B" and "C", and the areas identified for the lower pool facility, the "Lookout Bar" in its present configuration and the ADA compliant access trail.

- (2) Zone A, preserved naturalized vegetation zone (on the bluff face).
- (3) Zone B, the Coastal Bluff Scrub and Coastal Sage Scrub Zone: An approximately 80-foot wide restoration/buffer area, extending along the bluff top from the Long Point (just north of the "Lookout Bar") to the Point Vicente fishing access, also described as "buffer" and "enhancement" areas.
- (4) Zone C, the Enhanced Native Planting Zone: a strip of coastal sage scrub and "accent trees" adjacent to Palos Verdes Drive South from the Point Vicente fishing access parking lot to the entry road.
- (5) Zone D, the area surrounding the ADA compliant trail.

B. Development Restrictions:

- (1) Irrespective of whether the easement is accepted, the permittee and its successors shall maintain the areas described above in Special Condition 3A as habitat.
- (2) All planting within habitat areas shall conform to the requirements of Special Condition 7 addressing the preservation and/or planting of habitat and restoration areas, except that the applicant may retain the landmark grove of Canary Island palm trees located adjacent to the western bluff face.
- (3) No development, as defined in Section 30106 of the Coastal Act shall occur in habitat protection areas as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for habitat restoration, fencing and informational signs, approved drainage devices, designated trails and the viewing areas all as approved in this permit and identified in Exhibits 3 and 4.
- (4) **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE A COASTAL DEVELOPMENT PERMIT FOR THIS PERMIT (NOI)**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, formal legal descriptions of the portions of the subject property affected by this condition in Section B, as generally described above and shown on Exhibits 6 and 7 attached to the findings in support of approval of this permit.

4. **PARKING MANAGEMENT PLAN**

A. **PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a parking management plan for the review and approval of

the Executive Director that ensures the provision of no fewer than 1075 parking spaces on the property subject to this permit as a whole. These parking spaces include no fewer than fifty (50) public parking spaces within the eastern parking area adjacent to the trail head of the ADA compliant trail described in Special Condition 2A(5) and The 50 public spaces in the lot adjacent to the Point Vicente fishing access. Spaces on the on-site eastern parking lot shall be available from one hour before dawn until one hour after dusk. The plan shall include:

- (1) Signage on site identifying public parking and hours available in the public parking areas;
- (2) A written policy indicating that valets shall not park cars in these areas;
- (3) Signs shall indicate that if public spaces are occupied the public is welcome to park in any unoccupied space within the eastern 128-car parking easement area.
- (4) All contracts with conferences and weddings and other special events shall require that these programs direct attendees to areas outside of the public parking area.
- (5) Contracts shall provide that weddings, conferences and other events that increase parking demand over the number of spaces provided on site shall provide off-site valet parking or other methods to preserve no less than 50 parking spaces in the eastern parking lot for beach and trail visitors.

B. The permittee will undertake development and continue to operate in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. **MANAGEMENT /MAINTENANCE OF FACILITIES**

A. Construction Requirements:

- (1) Except as specified in Special Condition 1, before the commencement of demolition, construction or grading; a visible hazard fence shall be placed delineating the areas of approved grading, which shall be no less than 20 feet inland of the habitat restoration/enhancement and protection areas and no less than 30 feet inland of the edge of the bluff where there are no habitat restoration/enhancement and protection areas (Exhibits 6 and 7).
- (2) Said fence may be temporarily moved or adjusted to accommodate construction of approved trails or drainage devices, but heavy equipment storage or stockpiling shall not occur in the areas listed above, in Section A(1).

- (3) The applicant shall also place fencing to delineate all areas outside of the area identified for grading for the ADA accessible trail.
- (4) The Executive Director shall confirm in writing that the fencing is consistent with the condition. If the proposed fence is inconsistent with the adopted conditions of the permit, the permittee shall change the design to comply with the conditions, or if the inconsistency is due to a situation not anticipated in the Commission's action, submit an application to amend the permit.
- (5) No sediment shall be permitted to discharge onto the beach or intertidal area.

B. The permittee shall be responsible for maintaining the park, trails and habitat areas required in this permit and shall reimburse the accepting agency for costs incurred when/if the accepting agency takes over the maintenance of the public trails, park and/or habitat restoration/enhancement and protection areas. Prior to issuance of or transfer of this permit the permittees shall acknowledge in writing:

- (1) Nothing in this permit shall prevent the owner of land that is covered by this permit and is for sale, as a condition of sale, from requiring each buyer to contribute its fair and reasonable share of the costs of the maintenance of the area to the hotel operator to collect funds and carry out maintenance of the areas pursuant to Special Condition 5F below and to manage and maintain the area and drainage system in accordance with the terms and conditions of this coastal development permit. Nothing in this restriction condition imposes the obligation on the owner of an individually owned unit (a "casita" or "villa") to personally work on the streets, park or habitat areas.
- (2) The applicant and individual owners or lessees shall not install or maintain any invasive plant that is not indigenous to the Palos Verdes peninsula anywhere on the property as required in Special Conditions 7 and 8 of this permit and as shown on the 1997 Ocean Trails Invasive Plant List.

C. The permittee and its successors shall ensure that the entire storm water system, including but not limited to pipes, outfalls, stormfilters, trash traps, drainage systems, oil/water separators, Best Management Practices and other programs and devices required to protect habitat in ocean waters and tide pools are maintained, in good and working condition. This obligation includes obligations for regular and ongoing maintenance and cleaning and for replacement of damaged or aging elements of the system. The accepting agency (City of Rancho Palos Verdes) shall maintain all public trails, park, public parking and habitat restoration/enhancement and protection areas as required by this permit when/if the permittee fails to do so.

D. Public and commercial recreation facilities. The resort, including the restaurants, health spa, banquet facilities, clubhouse and golf practice facility will remain as commercial visitor-serving facilities open to the general public, and any

proposed change in the level of public use will require an amendment to this permit. The trails and public parking areas as identified in Special Condition 2 shall remain open to the general public with no fee for use. The public shall receive equal priority with hotel guests for use of all public facilities.

- (1) The permittee is required to maintain no fewer than 100 public parking spaces, consisting of 50 parking spaces adjacent to the Point Vicente Fishing Access and no fewer than 50 parking spaces located in reasonable proximity to the ADA accessible trail for public use of trails, parks and the beach.
 - (a) No fee shall be charged for the public's use of this parking. If hotel and restaurant visitors occupy the fifty (50) "public spaces" within the eastern 128-car parking easement area, other spaces within the eastern 128-car parking easement area shall be identified as public parking available to the public by clear and directional signage.
 - (b) No more than three special events that result in closure of this parking shall occur during any calendar year. Permitted special events shall be available to the general public, but they may charge a fee. No more than one of these events shall occur between the week before Memorial Day and the week after Labor Day. Operators of the event shall provide alternate parking for beach users and shall not interfere with the public's access to the public park, trails along the bluff and from the bluff top to the beach.
- (2) The permittee shall notify all tenants and all future buyers that the ADA compliant trail and other trails and access points will be used by the public to access fishing, surfing, diving and kayak areas, and such activities are frequently undertaken at early hours of the morning.
- (3) CASITA BUILDINGS ADJACENT TO TOP OF SHORELINE ACCESS ADA COMPLIANT TRAIL. The permittee shall install soundproofing such as thermal insulation and double-paned glass on these buildings.
- (4) CLUBS PROHIBITED. No club or other arrangement that will restrict use of the golf course by the general public shall be permitted.
- (5) OPERATIONS. The permittee and its successors in interest shall open these facilities as identified in the Long Point Resort Public Benefits Summary, dated December 24, 2002, to the public from one hour prior to dawn to one hour following dusk. No fee or validation shall be required for use of these facilities.
- (6) PUBLIC USE. The restaurants, overnight facilities, health spa, Lookout Bar, banquet facility and golf practice facility shall be open to the general public.

- (7) SIGNS. The designated public parking lots, restrooms and public access trails shall be identified as open to the public by appropriate visible signs subject to the review and approval of the Executive Director. The signs shall be erected in areas accessible to the public, including trail entrances and the resort entrance.
- (8) CASITA AND VILLA OCCUPANCY RESTRICTION. The 82 independently owned units (“casitas” and “villas”) are to be operated by the hotel as limited occupancy resort condominiums pursuant to a restriction whereby any independently owned unit shall not be occupied by an owner for more than 29 consecutive days and no more than 60 days per year for the Casitas and no more than 90 days per year for the villas. When not occupied by an owner, each unit will be available as a hotel accommodation. The hotel will be a designated booking agent for all unoccupied units, including those under contract to a third-party company for rental services. The rental management company will be required to notify the hotel of its available inventory for all units under contract and shall be required to accept bookings made through the hotel for rental to the general public. Further conversions of any portion of this project, including the individually owned units approved in Amendment A3, to any time-restricted or multiple ownership programs including, but not limited to, condominium, time-shares or other type of project that differs from the approved limited occupancy project requires an amendment to this coastal development permit. Pursuant to this condition:
- (a) Prior to issuance of this permit, the applicant shall submit for the review and approval of the Executive Director a signed and recorded Declaration of Restrictions/Agreement with the City of Rancho Palos Verdes and the Coastal Commission that substantially conforms to the conditions of this permit and guarantees that the applicant and its successors in interest shall maintain all units, including the individually-owned units, as hotel units, which shall be available to the general public on an equal basis. The recorded Declaration shall not be revised without the consent of the Commission, either through the Executive Director or with an amendment to this permit. Pursuant to this condition, the applicant shall ensure the following:
- (i) The operator of the hotel shall manage the condominiums as part of the hotel inventory, which management will include the booking of reservations through the rental agent, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing the units for use by guests/owners. In addition, if the hotel operator is not the owner’s rental agent, or if the owner is acting without a rental agent, then the operator shall have the right, working

through the owner or its designated rental agent, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder. The keys shall be electronic and created upon each new occupancy to control the use of the condominium units. The hotel operator shall provide monthly reports of owner and non-owner use to the City of Rancho Palos Verdes.

- (ii) The use of each casita by the owner(s) (no matter how many owners there are) shall be limited to a maximum of 60 days per calendar year, no more than 29 consecutive days, and a minimum 7-day period between 29-day periods of owner occupancy. Each casita is required to be available as a hotel accommodation and managed by the hotel.
 - (iii) The use of each villa by the owner(s) (no matter how many owners there are) shall be limited to a maximum of 90 days per calendar year, no more than 29 consecutive days, and a minimum 7-day period between 29-day periods of owner occupancy. Each villa is required to be available as a hotel accommodation and managed by the hotel.
 - (iv) The use of the hotel by any guest or owner shall be limited to no more than 29 consecutive days.
 - (v) All owners shall explicitly acknowledge that the public has access to the parks, trails, spa, restaurant, and other public amenities and facilities of the site.
- (b) In addition to the recordation of the Declaration of Restrictions referenced herein, and prior to the issuance of this permit amendment, the applicant shall submit a management plan that specifies the hotel operational procedures and condominium ownership restrictions that will ensure the on-going availability and retention of the resort units for public and visitor use. The management plan shall include the provision of an annual report to the Executive Director that aggregates the monthly reports of owner, non-owner and hotel use of the 582 units. The management plan shall be submitted to and approved in writing by the Executive Director. No changes to the management plan shall be made without an amendment to this permit unless the Executive Director determines that no amendment is required.

E. Other agreements. The applicant shall assure that all covenants and agreements with the City of Rancho Palos Verdes that address the operation of these public facilities, including the parking lots, the golf facility, the clubhouse, banquet room, restrooms and other public facilities, are consistent with this permit. Pursuant to this requirement, any agreements or covenants that delegate maintenance or operation of these public facilities to a third party shall be consistent with all terms and Conditions herein, and shall be provided to the Executive Director for review and approval with evidence of such consistency prior to their execution.

F. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT A-5-RPV-02-324, the applicant shall submit a written agreement, subject to the review and approval of the Executive Director, that requires the owner of the property to have the hotel operator physically maintain and keep in good repair all public trails, habitat, recreation facilities and drainage systems. The agreement shall apply to all parcels created by Tentative Parcel Map No. 26073 and to any parcels created by any subsequent division of the land covered by the map including subdivision for condominium purposes. The agreement shall acknowledge all the responsibilities and limitations of this permit.

G. The permittee shall undertake all development and construct and operate all facilities on the property consistent with these restrictions.

6. TRAIL REPLACEMENT

A. By acceptance of this permit, Coastal Development Permit A-5-RPV-02-324, the applicant acknowledges and agrees that if any of the bluff top trails (Long Point Bluff Top Trail, the ADA-Compliant Coastal Access Trail and the trail link between Long Point Bluff Top Trail and the Vanderlip Trail, an offsite trail) fails, and cannot be reasonably repaired within two weeks of damage, the applicant shall submit a report to the Executive Director for a determination of whether a permit amendment is necessary within two weeks of the event. If the Executive Director determines that an amendment is needed, the applicant agrees to submit an amendment application within two (2) months of the date the Executive Director notifies the applicant in writing that a permit amendment is necessary, and complete all replacement trails within one (1) year of time amendment is approved unless the Executive Director grants an extension for good cause. Said replacement trail(s) will be proposed in a safe area between the bluff edge and the structures. In such relocation the applicant shall take all reasonable measures to assure the public safety from golf balls. No cage or "slinky" shall be permitted in lieu of golf facility redesign. The design for such trails shall be accompanied by redesign and relocation, as necessary, of other improvements on the property, including the golf practice facility. The trail redesign or relocation shall provide the same quality of trail and level of access and shall provide access to and from the same areas as the original trail.

7. RESTORATION AND ENHANCEMENT OF HABITAT AREAS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a restoration and enhancement final plan for protection, enhancement and restoration of habitat areas described in Special Condition 7B. The plan shall be prepared by a licensed landscape architect or restoration specialist in consultation with the project biological consultant for the review and approval of the Executive Director. Prior to submittal of the plan to the Executive Director, the project geotechnical engineering and geologic consultants, the City of Rancho Palos Verdes geotechnical consultant, the Los Angeles County Fire Department and the Resources Agencies shall review the plans to ensure that the plans are in conformance with the project geologist and geotechnical engineer, the City and County consultants and public agencies' recommendations assuring public safety, the protection of endangered species and the protection of the near shore environment. The applicant shall provide, as part of the habitat and restoration plan, a plan and an agreement, for the review and approval of the Executive Director, for collecting seeds and cuttings from locally native plants found on this and adjacent properties. Seed collection shall be consistent with the approved plan. The habitat restoration/enhancement final plan shall conform with the following requirements:

A. Preparation/format of plan: The plan shall include, at a minimum, the following components:

- (1) A summary and map, based on the Final Environmental Impact Report (EIR) for the Long Point Resort Project, dated July 31, 2001 and the Addendum to the Certified EIR dated August 21, 2002 showing which species of native plants are found on the site and the topography of the developed site.
- (2) A survey of intact nearby bluff face and bluff top habitats, showing in each instance the degree of coverage, the species mix and the type of soil, the degree of sun exposure and the sources of moisture available for each habitat.
- (3) A list of goals for each of the habitat, enhancement and restoration areas listed in Special Condition No. 3, including but not limited to the needs of the El Segundo blue butterfly, migrating needs of coastal sage scrub species such as the coastal California gnatcatcher, and fire protection. Such goals shall be established in part by the performance of test plots.
- (4) A list of goals for timing and coverage. Timing and coverage shall be based on the expected growth rate of the plants the applicant proposes to use and the typical coverage of nearby sites in the bluff top and bluff face plant communities similar to the area addressed by the proposed plan.
- (5) Plans and measures to slow surface erosion appropriate to the expected growth rate of the plants. Alternative erosion control measures shall be identified and maintained until coverage is adequate to prevent surface erosion.

- (6) A map and separate list consistent with subsection B below, showing the species, size, and number of all plant materials proposed to be installed including the common and scientific name of the plant and whether or not the plant is native to the Palos Verdes Peninsula plant community, whether the plant appears on any of the lists of invasive plants shown in Special Condition 7C(5)(c) including the 1997 Ocean Trails Invasive Plant list, the area devoted to the plant and the type of installation proposed. The map shall show all other features such as proposed trails and hardscape.
- (7) A map showing proposed temporary irrigation. Temporary, above ground (e.g., "monitored drip") irrigation to allow the establishment of the plantings is allowed, but no permanent irrigation is permitted in habitat areas.
- (8) *A schedule for installation of plants;*
- (9) *A plan for site preparation indicating (1) method of cultivation, (2) soil preservation and (3) any herbicides proposed to be used and methods of application; and*
- (10) *A maintenance plan.*

B. (Unless otherwise specified, the areas below are those identified on the Long Point Resort Landscape Improvement Plans dated March 26 and 27, 2003). Plans for the following areas shall conform with the following criteria:

- (1) All areas seaward of the edge of the bluff including but not limited to Zone A Preserved Naturalized Vegetation Zone (6.7 acres of habitat on the bluff face). The applicant shall identify and if feasible remove aggressive invasive plants listed by the California Exotic Pest Plant Council. In areas disturbed by excavation, the applicant shall replant with plants of the coastal bluff scrub community.
- (2) Zone B, the Coastal Bluff Scrub and Coastal Sage Scrub Zone: An 80-foot wide "buffer" and "enhancement" area extending from the edge of the bluff inland and from the northwestern corner of the site, adjacent to the Point Vicente Fishing Access parking lot consisting of 1.05 acre of natural habitat consisting of coastal bluff scrub, and a landmark grove of Canary Island palms of approximately .15 acre. The applicant shall not disturb native vegetation. Except for the existing group of Canary Island palms located along the western bluff top and adjacent to the Long Point Bluff Top Trail, the applicant shall remove those invasive plants listed on the Ocean Trails list of invasive plants (1997) and on the California Exotic Pest Plant Council list of invasive plants. Plantings shall consist of coastal sage scrub plant species native to Rancho Palos Verdes and suitable to El Segundo blue butterfly. The first 30-foot wide "buffer" area of Zone B, adjacent to the bluff edge shall be fenced to discourage human encroachments. The applicant shall use *Eriogonum parvifolium* and shall not use *Eriogonum fasciculatum*. No "accent trees" are permitted in this area with the exception of the existing landmark grove

of Canary Island palms. The applicant shall use only local seeds and cuttings.

- (3) Drainage Line "C": All surface area disturbed by the installation of Drainage Line "C" shall be revegetated with locally collected seed and cuttings of coastal bluff scrub species native to Rancho Palos Verdes. No *Eriogonum fasciculatum* shall be used.
- (4) Existing drainage channel in southeastern corner of site: Invasive plants as identified on the "Ocean Trails list" shall be removed within 30 feet of the drainage. The applicant shall install riparian species native to Rancho Palos Verdes obtained, as feasible, from local cuttings.
- (5) Eastern Bluff Area: that part of the Eastern Bluff Area formerly identified as "Naturalized Coastal Grass Planting Zone with Native Accents" (also known as "Zone D") and the portions of "Zone H" or "turf zone" located seaward of the coastal setback line, with the exception of the portion of "Zone H" located adjacent to the lower pool facility, on the Long Point Resort Landscape Plan dated March 26 and 27, 2003, shall be restored with coastal bluff scrub (CBS) including *Eriogonum Cinereum*; a 1.5 acre area of adjacent bluff face slopes also within the Eastern Bluff Area shall be restored with coastal sage scrub species native to Rancho Palos Verdes and suitable to El Segundo blue butterfly, from local seed and cuttings. No trees, no turf and no *Eriogonum fasciculatum* shall be employed.
- (6) Zone C Roadside Enhanced Native Planting Zone. Applicant shall install plants adjacent to Palos Verdes Drive South that provide food and cover for wildlife, including gnatcatchers, migration between the nearby offsite habitat areas to the northeast and northwest under consideration for inclusion in the City's Natural Communities Conservation Plan (NCCP) Program as depicted in Exhibit 24. Species outside of expected shade canopies shall be predominantly coastal sage scrub plants. Tree canopies shall be limited to ten percent of the area. All plant materials shall be native to the Palos Verdes peninsula.

C. General Provisions for the Project Site

- (1) Planting will maintain views from Palos Verdes Drive South and to and along the bluffs and shall be consistent with the preservation of public views through the view corridors identified in the certified LCP for the project site.
- (2) Time limits for installation and completion of re-vegetation and enhancement of the bluff face, bluff ADA Compliant Trail and coastal bluff scrub and coastal sage scrub enhancement areas (includes Zones A, B, C and areas expected to be disturbed by grading.): The applicant shall provide a timetable consistent with the following: consistent with the experience of other projects in the area; for review and approval of the Executive Director; the surveys conducted as a result of the

requirements of subsection A above; and with the results of test plots in the identified areas.

- (a) The applicant may begin securing seeds and cuttings of native CBS materials found on the site and on the Palos Verdes peninsula within ten days of the Commission's action on this permit.
 - (b) Before the first rainy season following the issuance of the permit, the applicant shall remove invasives in the habitat restoration/enhancement and protection areas (Zones A, B, C and areas expected to be disturbed by grading).
 - (c) With the exception of areas identified for grading the ADA Compliant Trail and for disturbance for drainage lines, the applicant shall install the plants in the coastal bluff scrub enhancement areas Zones A, B and C within ten days after the second rain in the first rainy season after issuance of the coastal development permit. Installation shall continue until the end of the rainy season.
 - (d) In the case of areas approved for grading, the Drainage line "B" and Zone D, the area disturbed by grading for the ADA compliant trail on the bluff face and in a 1.5 acre area of bluff face adjacent to the trail and its supporting slopes, the applicant shall reserve topsoil and shall install plants at the beginning of the first rainy season after grading is complete. The applicant shall remove invasives and install plants of the coastal bluff scrub and coastal sage scrub communities before grading and install plants after the second rain in the first winter after the completion of grading of the bluff face access facilities.
- (3) All required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the habitat enhancement restoration plan. Invasive plants identified above shall be removed.
- (4) Pursuant to this requirement, all landscape personnel shall be provided training, and understandable manuals concerning the plant materials on the site and the requirements of this condition.
- (5) Except for the existing landmark grove of Canary Island palms located along the western bluff top and adjacent to the Long Point Bluff Top Trail, the permittee shall not install or allow to persist plants that are incompatible with habitat restoration and protection of native butterflies that have been identified anywhere on the property. These incompatible plants include:
 - (a) *Eriogonum fasciculatum* (California buckwheat)
 - (b) *Eucalyptus spp.*
 - (c) Invasive plants. Such plants are those identified on the "Ocean Trails Invasive Plant List" a list prepared for a project in Rancho Palos Verdes in consultation with the resources agencies, in the

California Native Plant Society publication "California Native Plant Society, Los Angeles -- Santa Monica Mountains Chapter handbook entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, February 5, 1996, and/or those species listed by the California Exotic Plant Pest Council (UC Davis) on any of their watch lists as published in 1999 and as updated periodically (See exhibit 25).

- (6) The applicant shall use no insecticides. Any herbicides proposed for use and the methods of application shall be identified in initial plans. The Executive Director shall reject any chemicals that may adversely impact off shore habitat or that are persistent or that are listed as inconsistent with habitat or water quality in Special Conditions 7, 9 and 20 below.

D. Monitoring. The applicant will actively monitor the site for three years after permit issuance, remove non-natives in habitat areas identified in Special Condition 7B and reinstall plants that have failed.

- (1) The applicant will inspect the site no less than every 30 days during the first rainy season (November-March), and no less than every 60 days during the first year, every three months thereafter or on a maintenance schedule provided as part of the habitat enhancement/ restoration plan, whichever is more frequent. A written record of such inspection shall be prepared.
- (2) If shown to be necessary by the inspections, the applicant shall remove invasive plants and replace plants that fail to establish.
- (3) On two occasions, three years and again five years from the date of the implementation of the restoration plan, the applicants shall submit for the review and approval of the Executive Director, a habitat area monitoring report, prepared by a licensed Landscape Architect that certifies the on-site habitat restoration is in conformance with the restoration plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.
- (4) If the restoration/enhancement monitoring report indicates the habitat restoration/enhancement and protection areas are not in conformance with or has failed to meet the performance standards specified in the restoration and enhancement plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a licensed Landscape Architect and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

E. The permittee shall undertake development in accordance with the approved habitat restoration and enhancement final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. LANDSCAPE PLAN FOR GOLF COURSE AND TRANSITIONAL AND ORNAMENTAL PLANTING ZONES

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final landscape plan prepared by a licensed landscape architect in consultation with the project biological consultant for the review and approval of the Executive Director. The plan shall apply to the areas identified as Zones D, E, F, G and H on the landscape plan. Prior to submittal of the plan to the Executive Director, the project geotechnical engineering and geologic consultants, the City of Rancho Palos Verdes geotechnical consultant, the Los Angeles County Fire Department and the Resources Agencies shall review the plans to ensure that the plans are in conformance with the project geologist and geotechnical engineer, the City and County consultants and public agencies' recommendations assuring public safety, the protection of endangered species and the protection of the near shore environment. The landscape plan shall conform with the following requirements:

A. Preparation/format of plan: The plan shall include, at a minimum, the following components:

- (1) A map and separate list showing the species, size, number of all plant materials proposed to be installed including the common and scientific name of the plant and whether or not the plant is native to the Palos Verdes Peninsula, the area devoted to the plant and the type of installation proposed. The plan shall show other landscape features such as proposed trails and hardscape.
- (2) A map showing proposed permanent irrigation for approved golf areas, for approved non-invasive, ornamental planting areas and for approved turf areas located around the hotel structures ("Zone F" and portions of "Zone H" landward of the coastal setback line) and temporary irrigation.
- (3) A list of goals for timing and coverage and of measures to slow surface erosion. Timing and coverage shall be based on the expected growth rate of the plants the applicant proposes to use and the typical coverage of the plants that are proposed. Alternative erosion control measures shall be identified and maintained until coverage is adequate to prevent surface erosion.

B. Plans shall conform with the following criteria:

- (1) Hotel/Resort Area Zones E, F, G, H and Zone D areas that are not located on the eastern bluff area as defined by the Coastal Setback Line, except for the portion of "Zone H" located adjacent to the lower pool facility, and as described in Special Condition No. 7B(5) (excluding golf and turf areas and non-invasive, ornamental planting areas located inland of the coastal setback line and located outside all habitat areas): All plantings shall consist of Palos Verdes natives and/or low and very low water use plants as defined by the University of California Cooperative Extension and the California Department of Water Resources in their joint publication: "*Guide to Estimating Irrigation Water needs of Landscape Plantings in California*" for Region 3. Conventional lawn areas shall be prohibited.
- (2) "Zone H" area adjacent to the lower pool facility. All plantings shall consist of Palos Verdes indigenous natives with no invasive plants as defined in Special Condition 7.C(5)(c)
- (3) Golf and Turf areas or those portions of "Zone H" that are located inland of the coastal setback line (not on the eastern bluff and outside of the habitat areas). The applicant shall provide evidence that proposed grass species is not invasive. No turf or golf holes shall be installed anywhere on the eastern bluff.
- (4) Ponds. Applicant shall install no less than 9 feet by 24 feet (area of lost habitat at the northwestern cement v-ditch identified in the Jurisdictional Delineation for Long Point, dated May 30, 2001 (Revised January 14, 2003) of mule fat and riparian species adjacent to pond areas.

C. General Provisions for the Project Site

- (1) Planting will maintain views from Palos Verdes Drive South and to and along the bluffs and shall be consistent with the preservation of public views through the view corridors identified in the certified LCP for the project site.
- (2) With the exception of the golf facility, the non-invasive ornamental planting areas and turf areas surrounding the hotel structures, the applicant shall install no permanent irrigation system on the project site. Temporary, above ground (e.g., "monitor drip") irrigation to allow the establishment of the plantings is allowed.
- (3) The applicant shall install efficient computerized irrigation systems in the golf and hotel turf areas, and the non-invasive ornamental planting areas. A professional golf course irrigation designer licensed in the State of California shall design the irrigation system. The irrigation system shall include, but not be limited to, the following components:
 - (a) The irrigation design will use current technology that maximizes control and efficiency of irrigation water.

- (b) The irrigation design will use data collected from on-site and local weather stations to determine evapotranspiration and irrigation requirements for turfgrass species used at the site.
 - (c) The sprinkler spacing, nozzle type and design will be such that maximum efficiency is achieved.
 - (d) A golf and turf approved area irrigation computer program will assist the superintendent in irrigation scheduling, pump efficiency, and record keeping.
- (4) The permittee shall not install or allow to persist plants that are incompatible with restoration and protection of native butterflies that have been identified anywhere on the property. These include:
- (a) *Eriogonum fasciculatum* (California buckwheat)
 - (b) *Eucalyptus spp.*
 - (c) Invasive plants as defined in Special Condition 7 above.

9. **INTEGRATED PEST MANAGEMENT PLAN**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a final revised Integrated Pest Management Plan (IPM Plan). The final plan shall demonstrate substantial conformance with the Proposed Long Point Destination Resort Integrated Pest Management Plan, dated March 28, 2003, prepared by James Connolly Consulting, Ltd, (Proposed IPM Plan). Where the “Proposed IPM Plan” is inconsistent with the specific requirements of this condition, this condition shall prevail. The plan shall also be in substantial conformance with the following requirements:

The IPM Plan shall favor non-chemical strategies over chemical strategies for managing pests on site. Chemical strategies shall only be employed after all other strategies have been used and proven ineffective. This shall be demonstrated by providing written notice to the Executive Director of the non-chemical strategies that were used, the reasons for their ineffectiveness, and the chemical strategies that are being considered. If the IPM is inconsistent with the conditions of this permit, the permit conditions shall prevail.

- (1) This IPM Plan shall be designed and implemented for all of the proposed landscaping/planting on the project site and shall include an analysis of the benefits of the selected landscaping materials on the native wildlife species that may use this vegetation. Any more restrictive provisions that apply specifically to the habitat restoration/enhancement and protection areas pursuant to Special Condition No. 7, above, apply either in addition to the provisions of this IPM plan or, in the event of a conflict, in place of any such conflicting provisions of this IPM Plan. The measures that the applicant shall employ include but are not limited to the following:

- (a) Introduction of native natural predators. Native, non-invasive bacteria, viruses and insect parasites shall be considered and employed as a pest management measure, where feasible.
- (b) Weeding, hoeing and trapping manually.
- (c) Use of non-toxic, biodegradable, alternative pest control products.
- (d) No insecticides may be employed anywhere at the site in order to protect the El Segundo Blue butterfly, a federally endangered native species of California, that has been found at the site.
- (e) *In the golf area only, when pesticides and/or herbicides are deemed necessary in conjunction with the IPM program, the following shall apply:*
 - (i) All state and local pesticide handling, storage, and application guidelines, such as those regarding timing, amounts, method of application, storage and proper disposal, shall be strictly adhered to.
 - (ii) Pesticides consisting of or containing chemicals listed on the California Clean Water Act Section 303(d) List of Water Quality Limited Segments (California 303(d) List) as causing an exceedance of water quality standards in the receiving waters for this site shall not be employed. The 1998 California 303(d) list includes DDT under "Long Point Beach", indicating that DDT is causing impairment of the waters of Long Point Beach adjacent to the development. "Santa Monica Bay Offshore and Nearshore" (which includes the waters adjacent to the development) is listed for DDT and chlordane. The 2002 California 303(d) list, which is pending approval by the US Environmental Protection Agency, makes no changes to these listings. In addition, none of the following chemicals (known as the Group A Pesticides or Chem A list), which have been found to impair waters tributary to Santa Monica Bay and in some cases are banned by the US Environmental Protection Agency, shall be employed: aldrin, chlordane, dieldrin, endrin, heptachlor, heptachlor epoxide, hexachlorocyclohexane (including lindane), endosulfan and toxaphene.

- (2) Time Limits for Hotel Landscaping. Final landscaping for all areas addressed in this condition shall be completed prior to the occupation of the adjoining hotel/restaurant structures approved by this permit.

B. Monitoring. The applicant will actively monitor the site for five years after permit issuance, remove invasive plants noted above and reinstall plants that have failed.

- (1) Five years from the date of the implementation of the landscaping plan, the applicants shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect that certifies the on-site landscaping is in

conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

- (2) If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. **SIGNAGE**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide a signage plan for the review and approval of the Executive Director. The plan shall provide at a minimum:

A. The project identification sign at Palos Verdes Drive South shall include notice of the public park, the public parking, and the presence of public trails.

- (1) The project identification sign shall be visible and legible from Palos Verdes Drive South.
- (2) The wording "public parking/beach access" shall appear on the sign in a typeface that is equal or larger in size to the words identifying the commercial facilities, such as resort or golf.

B. Signs identifying public parking areas and trail heads shall be present on the site in sufficient number to direct the public to these facilities.

- (1) Such signs shall be easily legible and no less that 30 inches by 24 inches and
- (2) Such signs shall direct the public to available parking and trails.

C. Interpretive signs/cautionary signs; the permittee may place small low-key interpretive and cautionary signs near habitat areas and near the bluff edge and at the entrance to steep trails.

D. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. PROJECT LIGHTING

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide lighting plans for the review and written approval of the Executive Director. The plans shall provide:

- (1) Illumination shall be at the lowest levels that will still provide the amount necessary for safety.
- (2) No lights, with the exception of low intensity path lights, shall spill over into the buffer area.
- (3) Exterior building lights and path lights shall be directed downward so that direct spillover outside the immediate area of the buildings shall not exceed ten feet.
- (4) No night work or night construction lighting shall be permitted.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

12. IN-LIEU FEE FOR THE PROVISION OF LOWER COST VISITOR ACCOMMODATIONS

For purposes of this condition, the acronym "LAC-AYH" means the Los Angeles Council of American Youth Hostels, Inc., and the term "AYH Agreement" refers to the June 26, 2002 agreement between the Coastal Commission and LAC-AYH.

Prior to the issuance of this coastal development permit, but only after the Executive Director of the Coastal Commission has indicated, in writing, that the Commission has entered into an agreement (the "New Agreement") modeled upon the AYH Agreement, the applicant shall provide, through a financial instrument subject to the review and approval of the Executive Director, a mitigation fee of not less than \$540,000 payable to the public agency or private non-profit association designated, in writing, by the Executive Director (including, but not necessarily limited to, LAC-AYH) to be used generally for the acquisition of land and/or construction of a low-cost visitor serving hostel facility in the urban coastal area of Los Angeles County and specifically in accordance with the terms and conditions of the New Agreement.

13. **CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS TO
GEOTECHNICAL REPORT AND REQUIREMENTS OF CITY GEOTECHNICAL
REVIEW**

A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in Geotechnical Review of the Proposed Grading Plan for Destination Development, *Destination Development Corporation – Geotechnical Consultation*, Law/Crandall Project 70131-2-0076.0002, all subsequent, supplemental recommendations identified in the geologic reports listed under Substantive File Documents in the Commission Staff Report dated May 28, 2003, and the specific requirements of the City of Rancho Palos Verdes addressing geologic safety/site stability. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluations approved by the California Coastal Commission for the project site.

B. The applicant shall amend its final plans so that the underlying soils are protected from increased saturation by the following methods:

- (1) Implementation of water-efficient, computerized irrigation system as described in Special Condition 8.C.(2) and (3) for the golf course and turf areas surrounding the hotel structures outside of the habitat restoration areas.
- (2) The applicant shall install separate water meters for pools and for permanent and temporary supply lines for irrigation. Permanent lines are only acceptable in hotel/golf turf areas; and on the major supply lines for each group of individual structures. All such lines shall incorporate (i) alarms that sound if there is a significant change in the rate or duration of flow or gross quantity of water in a particular period without a manual override in advance and (ii) automatic cutoff if the duration and rate of flow exceeds that anticipated by more than 100% or by a rate determined by the project geologist to be hazardous.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

14. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

15. NO FUTURE SEAWARD EXTENSION OF SHORELINE PROTECTIVE DEVICE

A. *By acceptance of this permit, the applicant agrees, on behalf itself and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device, installed prior to Feb. 2 1973, as described and depicted on an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, shall be undertaken if such activity enlarges the footprint of the subject shoreline protective device either seaward or laterally. By acceptance of this permit, the applicant waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.*

- (1) Inspection/Repair of Revetment. The applicant shall have an inspection of the existing riprap revetment completed by a licensed civil or geotechnical engineer prior to the issuance of the coastal development permit. Based on the inspection and in conjunction with construction, the applicant shall be responsible for repositioning any rocks onto the revetment that have migrated onto the beach to assure beach encroachment has been minimized. The inspection shall be completed within 30 days of Commission action on this permit. The repositioning of rocks shall be completed within 30 days of commencement of construction.

C. **PRIOR TO THE ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description of the shoreline protective device approved by Commission staff report dated May 28, 2003, as generally described above and shown on Exhibit 8c attached to this staff report, showing the footprint of the device and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).

16. SHORELINE PROTECTION MONITORING PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a monitoring plan, prepared by a licensed civil or geotechnical engineer for the review and written approval of the Executive Director. The plan shall be sufficient to assess the performance of the existing revetment and shall include at a minimum:
- (1) A description of the approved shoreline protection device;
 - (2) A discussion of the goals and objectives of the plan, which shall include maintenance of the revetment to assure its optimum designed performance without adversely affecting surrounding development or public access along the coast, public views, or fill of tidelands.
 - (3) Provisions for taking measurements of the reconfigured revetment documenting the location of the toe, sides and elevation of the revetment and the alignment of the 8 foot-wide public access path between the existing restaurant and patio areas and the revetment. The plan shall identify exactly where such measurements will be taken, e.g. by reference to benchmarks, survey positions, or points shown on an exhibit, and the frequency with which such measurements will be taken;
 - (4) Provisions for submission of “as-built” plans for the repaired revetment and public access path, showing the permitted structures in relation to the existing topography and showing the measurements described in subsection (3) above, within 30 days after completion of construction of the repairs to the revetment and removal of obstructions in the public access path;
 - (5) Provisions for inspection of the condition of the shoreline protection device by May 1 of every year by a licensed civil or geotechnical engineer, including the scope and frequency of such inspections.
 - (6) Provisions for submittal to the Executive Director by May 1 of every 3 years and after every major storm (greater than 25 year event) for the life of the structure of a monitoring report that has been prepared by a licensed civil or geotechnical engineer. Each monitoring report shall contain the following:
 - (a) An evaluation of the condition and performance of the approved shoreline protection device, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the device,
 - (b) All measurements taken in conformance with the approved monitoring plan,
 - (c) A description of any migration or movement of rock that has occurred on the site, and
 - (d) Recommendations for repair, maintenance, modifications or other work to the device.

- B. If a monitoring report contains recommendations for repair, maintenance or other work, the permittee shall contact the Coastal Commission District Office to determine whether such work requires a coastal development permit.
- C. The permittee shall undertake development in accordance with the approved final plans. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

17. NO FUTURE BLUFF OR SHORELINE PROTECTIVE DEVICE

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. **A-5-RPV-02-324**, as amended, including, but not limited to, (582 room resort, golf practice facility, club house, conference center, 4 restaurants, related commercial uses, public trails; 100 public parking spaces and open space) in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including (describe the development, e.g., the house, garage, foundations, and septic system), if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

18. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No. A-5-RPV-02-324, as amended. Pursuant to Title 14, California Code of Regulations, sections 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code, Sections 30610(a) and 30610(b) shall not apply. Accordingly, any future improvements to the development described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, Sections 30610(d) and Title 14, California Code of Regulations, Sections 13252(a)-(b), shall require an amendment to Permit No. A-5-RPV-02-324 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government, unless the Executive Director of the Commission determines that no amendment or new permit is required.

19. EROSION CONTROL DURING CONSTRUCTION

A. Erosion and siltation control. Prior to the commencement of grading, the applicant shall provide to both the City and the Executive Director, for their joint review and approval, plan notes and general standards for erosion control. On or before September 15th of each year of construction, the applicant shall provide to both the City and the Executive Director for their joint review and approval, interim (time period prior to completion of project) erosion and sediment control plans that will prevent siltation and/or deposition of construction debris onto the beach, tide pools and habitat areas adjacent to the site. All sediment, construction debris, and waste products should be retained on-site until they can be removed to an approved disposal location. The approved plans shall be subject to the following requirements and include the following components:

1. *Erosion on the site shall be controlled to avoid adverse impacts to beaches, intertidal and habitat areas. This shall include erosion due to on-site drainage or on-site release of water or off-site water that travels through on-site drainage channels, construction activities, and the existence of roads and graded pads on the site. The applicant shall take all safe and reasonable measures to control siltation attributable to a landslide or other earth movement.*
2. *The following temporary erosion control measures shall be used during construction activity: a combination of temporary measures (e.g., geo-fabric blankets, spray tackifiers, silt fences, fiber rolls, sand bags and gravel bags), as appropriate, during each phase of site preparation, grading and project construction, except that straw bales shall not be employed. The applicant shall also provide containment methods to prevent manmade debris and/or chemicals from slope stabilization from entering the intertidal or offshore waters.*

3. *Following construction and throughout the interim period, erosion on the site shall be controlled to avoid adverse impacts on dedicated trails, public roadways, beaches, tide pools and habitat areas.*
 4. *A copy of the Storm Water Pollution Prevention Plan (SWPPP) and any amendments thereto, prepared for compliance with the State Water Resources Control Board General Construction Activity Permit, which specifies BMPs appropriate for use during each phase of site preparation, grading and project construction, and procedures for their installation, based on soil loss calculations. The submitted calculations will account for factors such as soil conditions, hydrology (drainage flows), topography, slope gradients, vegetation cover, use of chemicals or fixatives, the type of equipment or materials proposed for use near shoreline areas and groundwater elevations.*
 5. *A site plan showing the location of all temporary erosion control measures. Such site plan may acknowledge that minor adjustments in the location of temporary erosion control measures may occur if necessary to protect downstream resources. Such measures shall be noted on project grading plans.*
 6. *A plan to mobilize crews, equipment, and staging areas for BMP installation during each phase of site preparation, grading and project construction, with timing of deployment based on the forecast percentage of rainfall occurrence. The plan shall also address provisions for delivery of erosion prevention/control materials, or access to onsite supplies including specifications for adequate storage capabilities.*
 7. *A plan for landscaping, consistent with Special Conditions No. 7, 8 and 9.*
 8. *Limitations on grading activities during the rainy season, from October 15 to April 15 of each year, wherein grading may only occur in increments as determined by the City Engineer so that exposed soils do not exceed what is proposed in the interim erosion control plans. Should grading take place during the rainy season (October 15 - April 15), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations, and maintained throughout the development process to control erosion, and to trap and remove manmade debris, coarse sediment and fine particulates from runoff waters leaving the site during construction activity, prior to such runoff being conveyed off site. All areas disturbed, but not completed, during the dry season, including graded pads, shall be stabilized in advance of the rainy season.*
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

20. WATER QUALITY

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a final revised Standard Urban Storm Water Mitigation Program (SUSMP) (i.e., site-specific water quality management plan) for the post-construction project site. The revised SUSMP shall be prepared by a licensed water quality professional and shall include project plans, hydrologic calculations, and details of the structural and non-structural Best Management Practices (BMPs) that shall be included in the project.

The final SUSMP shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. The final SUSMP shall demonstrate substantial conformance with the Standard Urban Storm Water Mitigation Program (SUSMP) for Long Point Destination Resort dated May 15, 2003, prepared by The Keith Companies. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

1. Best Management Practice Specifications

- a. Site Design, Source Control, and Treatment Control BMPs shall be designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of storm water and nuisance flow leaving the developed site.
- b. Runoff shall be conveyed off site in a non-erosive manner.
- c. Energy dissipating measures shall be installed at the terminus of outflow drains, where necessary to prevent erosion.
- d. Following construction, erosion on the site shall be controlled to avoid adverse impacts on dedicated trails, public roadways, beaches, tide pools and habitat areas.
- e. The BMPs shall be selected to address the pollutants of concern for this development, including, but not limited to, sediments, nutrients, pesticides, fertilizers, metals, petroleum hydrocarbons, trash and debris, and organic matter.
- f. Source control BMPs shall be preferred over treatment control BMPs.
- g. Maintain, to the maximum extent practicable, pre-development peak runoff rates and average volume of runoff;
- h. Runoff from all new and redeveloped surfaces (e.g., roads, parking lots, maintenance areas) shall be collected and directed through a system of appropriate structural BMPs.
- i. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat or filter the volume of water resulting from 3/4 of an inch of rainfall in a 24-hour period over the entire tributary drainage area. (The Los Angeles Regional Water Quality Control Board has determined that in the Los Angeles area this is equivalent to the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-

hour storm event, with an appropriate safety factor [i.e., 2 or greater], for flow-based BMPs.)

- j. The structural BMPs shall be constructed prior to or concurrent with the construction of infrastructure associated with the development within Tentative Parcel Map No. 26073. Prior to the occupancy of the resort structures approved by this permit, the structural BMPs proposed to service those structures and associated support facilities shall be constructed and fully functional in accordance with the final SUSMP approved by the Executive Director.
- k. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development to ensure the water quality special conditions are achieved. Maintenance activity shall be performed according to the specifications in the SUSMP. At a minimum, maintenance shall include the following:
 - (1) All structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no later than October 1st of each year; after every major storm event; and at least once during the dry season;
 - (2) Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
 - (3) It is the applicant's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specification and to ensure maximum pollutant removal efficiencies.
 - (4) Wetlands vegetation installed within the wet ponds shall be monitored and maintained in a manner that ensures successful establishment of the vegetation and ongoing ability of the vegetation to remove pollutants for the life of the development. All such maintenance shall be conducted under the supervision of a qualified wetlands biologist or qualified professional for the life of the development.
 - (5) Adequate storage capacity shall be maintained above the permanent "pool" in the wet pond in order to detain stormwater runoff and promote pollutant settling.
 - (6) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work. If the Executive Director determines that an amendment or a new permit is required to authorize the work, no such work shall begin or

be undertaken until it is approved in accordance with the process outlined by the Executive Director;

- (7) Should a qualified water quality professional(s) determine that the Recommended Maintenance Procedures as proposed in the SUSMP need to be revised due to site-specific data, the applicant shall submit revisions and supporting information describing the reason for the revisions for review and approval of the Executive Director.

2. Nuisance Flow (Low Flow) Pumped to a Wet Pond

- a. All nuisance flow (low flow) shall be pumped to and treated by Wet Pond 1 ("Wet Pond A") on a year round basis.
- b. The applicant shall submit final design specifications for the installation of the low flow diversion pump(s). Prepared by a licensed water quality professional, the design shall demonstrate sufficient sizing of pump(s) and/or pump structures to divert all dry weather/nuisance flows from the storm drain system.

3. Restaurants

- a. Wash down areas for restaurant equipment and accessories and food preparation areas shall be designed to meet the following:
 - (1) The area shall be self-contained, equipped with a grease interceptor, and properly connected to a sanitary sewer. The grease interceptor shall have the capacity to capture grease to the maximum extent practicable.
 - (2) If a wash area is to be located outdoors, it shall be covered, paved, have primary containment, and be connected to the sanitary sewer.
 - (3) The grease interceptor shall be regularly maintained according to manufacturer's specifications to ensure maximum removal efficiencies.
 - (4) The applicant shall be responsible for ensuring that restaurant owners, managers, and staff are educated about the use and maintenance of grease interceptors, as well as BMPs designed to limit, to the maximum extent practicable, the contribution of pollutants from restaurants, wash areas, loading areas, trash and recycling storage areas.
 - (5) The applicant shall not use or distribute any polystyrene or foamed polystyrene product (including, but not limited to, foamed polystyrene cups, plates, and "to go" food boxes).
 - (6) Informational signs around the establishments for employees and customers about water quality and the BMPs used on-site shall be provided.
 - (7) The above restaurant management practices shall be incorporated into a lease agreement with the concessionaire or operator of such facilities so that such requirements are binding upon them.

4. Trash and recycling containers and storage areas

The applicant shall construct trash and recycling containers and storage areas that, if they are to be located outside or apart from the principal resort structures, are fully enclosed and water-tight in order to prevent stormwater contact with waste matter which can be a potential source of bacteria, grease, and particulates and suspended solids in runoff, and in order to prevent dispersal by wind and water. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area(s), and must be screened or walled to prevent off-site transport of trash.

5. Sweeping

The applicant shall, on a weekly basis, sweep the parking areas and roads to remove sediment, debris, and vehicular residues. Washing-down of impervious surfaces is prohibited, unless these nuisance flows are captured and treated on site by diversion to Wet Pond "A" and do not contribute any additional pollutants to the runoff.

6. Pools, Spas, and Fountains

Pool, spa, and fountain water shall not be discharged into the storm drain system, the Pacific Ocean, or any other receiving water. For maintenance and repair of the pool, spa, and fountain structures, BMPs shall be utilized to ensure no pollutants are discharged to receiving waters. If drainage is necessary, pool and fountain water shall only be drained into a pipe connected to the sanitary sewer system.

7. Education and Training

- a. Annual verbal and written training of employees, tenants, landscapers, BMP maintenance crews, property managers and other parties responsible for proper functioning of BMPs shall be required.
- b. Outdoor drains shall be labeled/stenciled to indicate whether they flow to an on-site treatment device, a storm drain, or the sanitary sewer, as appropriate.
- c. Storm drain stenciling ("No Dumping, Drains to Ocean" or equivalent phrase) shall occur at all storm drain inlets in the development.
- d. Informational signs about urban runoff impacts to water quality and the BMPs used on-site shall be provided (e.g., at trail heads, at centralized locations near storm drain inlets, near the wet ponds, etc.).
- e. The applicant or responsible party shall be responsible for educating all landscapers or gardeners on the project site about the IPM program and other BMPs applicable to water quality management of landscaping and gardens. Education shall include distribution of written materials, illustrations and verbal instruction.

B. Water Quality Monitoring Program

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a revised final Water Quality Monitoring Program Plan (monitoring plan), designed to characterize and evaluate the potential effects of stormwater and dry weather runoff from the proposed development on receiving waters. The final plan shall demonstrate substantial conformance with the Monitoring Program included in chapter VI of the Standard Urban Storm Water Mitigation Program (SUSMP) for Long Point Destination Resort dated March 14, 2003 and revised May 15, 2003, prepared by The Keith Companies, and it shall be consistent with the requirements of these special conditions:

1. Water quality monitoring shall comply with the following requirements:
 - (a) The monitoring plan shall identify the pollutants of concern for this site (or any appropriate indicator parameters) that will be monitored. The Monitoring Plan shall identify a process for adding to or deleting parameters from the plan.
 - (b) The plan shall specify sampling protocols to be used for each water quality parameter. Measurements must be precise enough to evaluate whether receiving waters are meeting applicable water quality standards.
 - (c) The plan shall specify the sampling locations (e.g., upgradient site boundary, wet ponds, discharge points).
 - (d) The plan shall specify the sampling frequencies (e.g., baseline, dry weather, first flush, subsequent storm events).
2. The Monitoring Program plan shall include a map of the proposed sampling locations.
3. Annual reports and semiannual updates containing data and analytical assessment of data in comparison to any applicable water quality objectives and other criterion specified herein, shall be submitted to the Executive Director of the Commission and to the Los Angeles Regional Water Quality Control Board after all construction approved by this permit has been completed.

C. The permittee shall undertake development and shall operate the site in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

21. UNITED STATES ARMY CORPS OF ENGINEERS APPROVAL

PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall provide to the Executive Director a copy of a permit issued by **United States Army Corps of Engineers**, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the

project required by the **United States Army Corps of Engineers**. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

22. RETENTION OF LOCAL GOVERNMENT CONDITIONS OF APPROVAL

Nothing in this action is intended to or does change any action taken by the local government, including the conditions of approval for CDP No. 166 approved by the Rancho Palos Verdes City Council on August 28, 2002, except as explicitly stated herein or to the extent that any such conditions are in conflict with the Commission's special conditions listed herein. For purposes of condition compliance, the City of Rancho Palos Verdes shall remain responsible for reviewing and determining compliance with special conditions imposed through CDP No. 166 as contained in Exhibit 2.

23. INSPECTIONS

The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

24. COMPLIANCE

All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any changes approved in this permit and any amendments and subject to any revised plans provided in compliance with the Commission's special conditions and any other special conditions noted above. Any proposed change from the approved plans must be reviewed and approved by the Executive Director to determine if an amendment is necessary. Pursuant to this, all development/uses on site shall conform to the proposed project description as submitted, dated March 25, 2003, including but not limited to a public golf practice facility, 582-room hotel with health spa, restaurants and banquet facilities, four public access trails, a connecting trail to the existing offsite adjacent Vanderlip Trail and no fewer than one hundred (100) public parking spaces, as modified by the Commission's action. If there are inconsistencies, the conditions of this permit shall prevail.

25. PROOF OF LEGAL ABILITY TO COMPLY WITH CONDITIONS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide 1) proof of undivided legal interest in all the properties subject to this permit, or 2) proof of the permittee's ability to comply with all the terms and conditions of this coastal development permit.

26. SURRENDER OF ALL PREVIOUS PERMITS APPLYING TO THIS PROPERTY INCLUDING CDP NO. A-5-RPV-91-046

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant(s) and all legal owners of the property shall surrender in writing all rights to construct under all previous coastal development permits that apply to this property including but not limited to Coastal Development Permit A-5-RPV-91-046.

27. FUTURE SUBDIVISION/TRACT MAPS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant permittee shall acknowledge in writing that all future conversions to independent ownership, including but not limited to parcel maps or tract maps, will require an amendment to this coastal development permit.

28. BUYER'(S) ACKNOWLEDGMENT

- A. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the owner(s) of the property that is the subject of this permit shall agree that before any sale or transfer of any of that property or any interest in that property that occurs before completion of all public amenities required in this permit and establishment of habitat restoration areas required in this permit (collectively, the "Improvements"), the owner-seller shall secure a letter from the buyer of the property (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is restricted by the special conditions of the permit and restrictions recorded on the property pursuant thereto, and development of the property is contingent on the implementation of habitat preservation and enhancement described in the final habitat restoration plan and the construction and opening to the public of public trails and other public access and recreation amenities, (c) that pursuant to the special conditions of the permit and the special offers recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect.
- B.** Subsequent to the issuance of this coastal development permit, and prior to the sale or transfer of any of the property or any interest in the property that is the subject of this permit that occurs before completion of all of the Improvements, the owner of the property being sold shall secure a letter from the buyer (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is therefore restricted by the special conditions of this permit and restrictions recorded on the property pursuant thereto, and development of the property is contingent on the implementation of habitat preservation and enhancement described in the final habitat restoration plan and the construction and opening to the public of public

trails and other public access and recreation amenities, and furthermore, (c) that pursuant to the special conditions of the permit and the special offers recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to close of escrow on any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect.

- C. A copy of such letter(s) shall be provided to the Executive Director, and the Planning Director of the City of Rancho Palos Verdes before close of escrow.

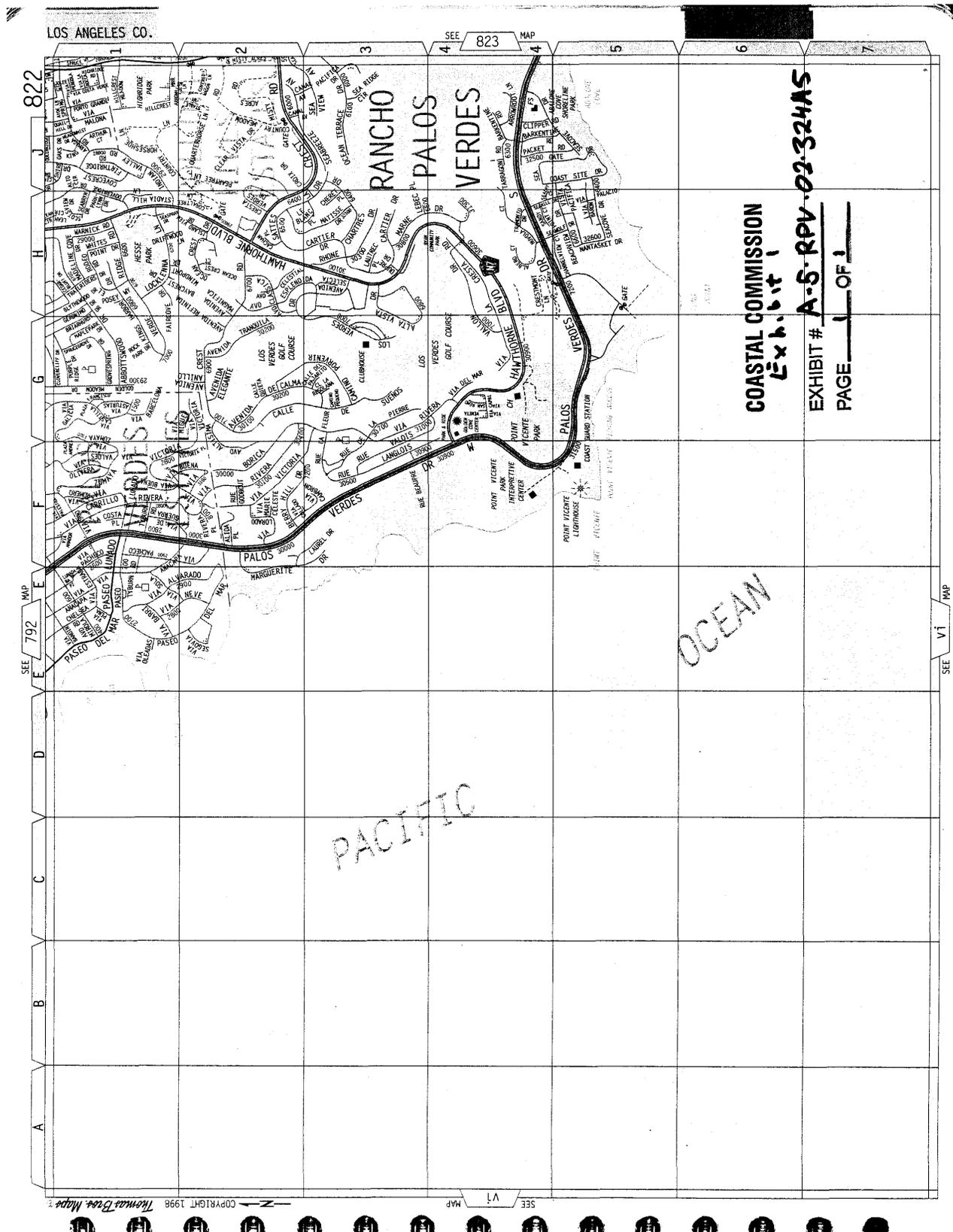
29. GENERIC DEED RESTRICTION

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

30. SPECIAL CONDITIONS TO REMAIN IN EFFECT

Unless specifically altered by amendment A-5-RPV-02-324-A3, all standard and special conditions attached to Coastal Development Permit A-5-RPV-02-324, remain in effect. All standard and special conditions previously imposed under CDP A-5-RPV-02-324, apply equally to the amendment. In general, when a special condition refers to “this permit” the language shall be interpreted to mean “this permit, as amended.”

Exhibits
A-5-RPV-02-324
#1-6



COASTAL COMMISSION
Exhibit 1

EXHIBIT # A-5-RPV-02-324AS
PAGE 1 OF 1

OCEAN

PACIFIC

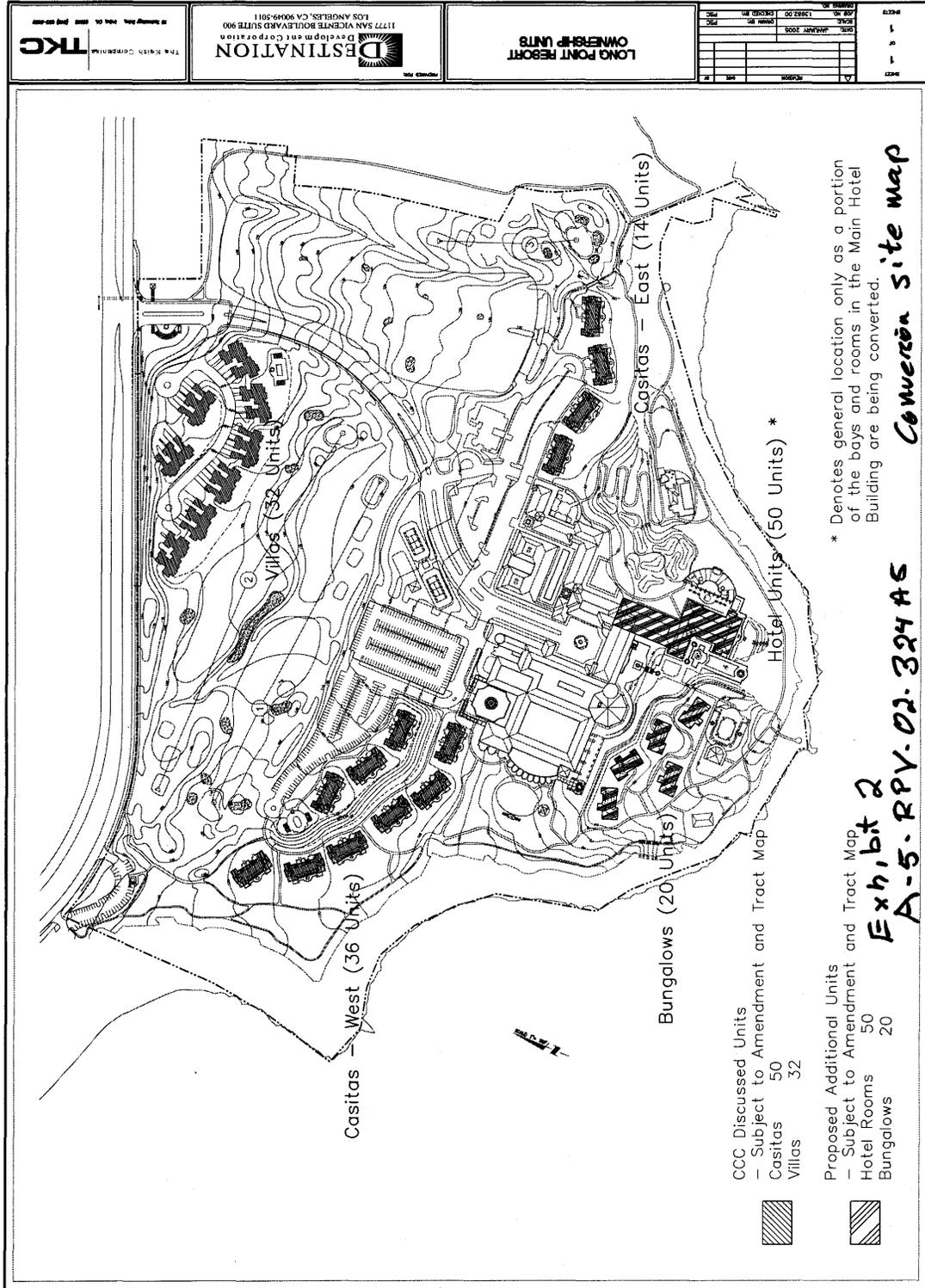


Exhibit 3

A-5-RPV-02-324-A5, Applicant's suggested modifications to the deed restriction.
Page 1 of 7

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Rancho Palos Verdes
Planning, Building and Code Enforcement
30940 Hawthorne Boulevard
Rancho Palos Verdes, California 90275

NO RECORDING FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383

Exempt from recording fees pursuant to Government Code §6103.

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("**Declaration**") is entered into this ___ day of _____, 2005, by and among Long Point Development, LLC, a Delaware limited liability company ("**Long Point**"), the City of Rancho Palos Verdes, a municipal corporation ("**City**"), and the California Coastal Commission ("**Commission**").

RECITALS

A. Long Point is the fee owner of that certain real property located in the City of Rancho Palos Verdes, County of Los Angeles, State of California, and more particularly described on Exhibit A attached hereto ("**Property**").

B. Long Point has obtained approval from City and Commission to develop and construct on the Property a 582-room resort ("**Hotel**"), golf academy/practice facility, conference center, spa, related commercial uses, restaurants, public trails and park areas, coastal access points, related parking and appurtenant facilities, all as more particularly described in the Resolution (as defined below) (collectively, the "**Project**").

C. A portion of the Hotel as more particularly described in Article 1 hereof has been subdivided into condominium units (each a "**Condominium**" and collectively, the "**Condominiums**").

D. Pursuant to Conditions 35, 36, 37, 38, 39 and 189 set forth in Exhibit "B" to Resolution No. 2004 - 78 entitled "Long Point Resort Hotel Conditions of Approval Revision 'A' - Council Approved September 7, 2004" (the "**Resolution**"), and to the Special Conditions of Coastal Development Permit No. A-5-RPV-02-324 (collectively, the "**Conditions**"), as a condition to the approval of the Project, Long Point is required to record this restrictive covenant against the Condominiums. The Conditions shall continue to restrict the use and enjoyment of the Property so long as either the Coastal Development Permit or the

development it authorizes or any part, modification, or amendment thereof, remains in existence on or with respect to the Property.

E. Long Point, City, and Commission desire to enter into this Declaration to bind the Condominiums and to satisfy the Conditions.

DECLARATION

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Long Point agrees for its own benefit, the benefit of the Operator (as hereinafter defined) and for the benefit of City and Commission as follows:

1. Restrictive Covenant.

1.1 Management by Hotel. During the term of this Declaration, when a Condominium is not being used by its owner it shall be managed by the operator of the Hotel designated by the owner of the Hotel (“Operator”). In addition, if the Operator is not the owner’s rental agent, or if the owner is acting without a rental agent, then the Operator shall have the right, working through the owner or its designated rental agent, to book any unbooked room to fulfill demand. In all circumstances, the Operator shall have full access to the Condominiums’ reservation and booking schedule so that the Operator can fulfill its booking and management obligations hereunder. As used in this Section 1, the terms “managed”, “management” and words of similar import shall mean that the Operator shall be engaged by each owner of a Condominium pursuant to Operator’s then-standard form of agreement to manage the upkeep and care of such Condominium and its use by parties other than the owner, including by providing such services as routine house keeping, upkeep and repair of the interior of each Unit (as defined below), monitoring and managing repair and replacement of furniture, fixtures and equipment, and providing mandatory front desk check-in and check-out services to the owner and the owner’s guests, and a report of owner and non-owner use to the City and the Commission.

1.2 Hotel Accommodations. The Hotel includes: a main hotel building containing three hundred sixty (360) hotel rooms (“Rooms”); forty (40) freestanding bungalow units (each, a “Bungalow” and collectively, the “Bungalows”); fifty (50) Casitas units (each a “Casita” and collectively, the “Casitas”); and thirty-two (32) Villas (each a “Villa” and collectively, the “Villas”).

1.3 Condominiums. For the purposes of this Declaration, the term “Condominiums” shall mean and include all of the Casitas and all of the Villas, each of which will be condominiums which are available for sale to individual persons or private entities for use in accordance with the Conditions.

1.4 Limitations on Use of Casitas. The Casitas are subject to the following restriction on owner occupancy, which restriction shall be deemed to be included with and imposed as restrictions on each and every conveyance of a Casita without express reference thereto in the deed evidencing such conveyance: (i) the owner of a Casita (no matter how many parties constitute such owner) may occupy such owner’s Casita for no more than sixty (60) days

per calendar year, and for no more than twenty-nine (29) consecutive days; (ii) a minimum seven (7) day period shall intervene between each twenty-nine (29) consecutive day period of occupancy by the owner; and (iii) when not being used by its owner, each such Casita shall be available as a Hotel accommodation, and shall be managed by the Operator as set forth in Section 1.1 hereof.

1.5 Limitations on Use of Villas. The Villas are subject to the following restriction on owner occupancy, which restriction shall be deemed to be included with and imposed as a restriction on each and every conveyance of a Villa without express reference thereto in the deed evidencing such conveyance: (i) an owner of a Villa (no matter how many parties constitute such owner) may occupy such owner's Villa for no more than ninety (90) days per calendar year, and for no more than twenty-nine (29) consecutive days; (ii) a minimum seven (7) day period shall intervene between each twenty-nine (29) consecutive day period of occupancy by the owner; and (iii) when not being used by its owner, each Villa shall be available as a Hotel accommodation, and shall be managed by the Operator as set forth in Section 1.1 hereof.

1.6 Use by Hotel Guests. Any person or entity ("hotel guest") who pays to occupy one or more Villas or Casitas (each a "Unit" and collectively, the "Units") shall not occupy or have the right to occupy any such Unit for more than twenty-nine (29) consecutive days. On or before the twenty-ninth day (29th), the hotel guest shall check out of such Unit(s).

2. Term. This Declaration shall become effective on the date on which the Property is subdivided to create the Condominiums (as evidenced by recording of a condominium plan which imposes a condominium regime on the Villas or Casitas) and shall continue in full force until the earlier to occur of (i) termination of this Declaration by written agreement of Long Point (or its successor or assign, as applicable), the City and the Commission, or (ii) the date on which a hotel ceases to be operated on the Property, provided Long Point, or its successor or assign provides City and the Commission 60-days prior written notice of such cessation.

3. Covenants Running With the Land. Long Point declares that the Condominiums shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the provisions of this Declaration, all of which are declared to be in furtherance of and for the protection of and maintenance and improvement of the Condominiums and to comply with the Conditions. Pursuant to applicable law, including, but not limited to, Section 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Declaration (i) are hereby imposed as equitable servitudes on the Condominiums for the benefit of Long Point, its successors and assigns, Operator, the City and the Commission, and (ii) shall run with the land and be binding upon and inure to the benefit of the Condominiums and each and every portion thereof or interest therein, and all parties having or acquiring any right, title, or interest in the Condominiums or any portion thereof, and their successors and assigns.

4. Miscellaneous.

4.1 Notices. Any notices, demands or other communications required or permitted to be given by any provision of this Declaration or which any party may desire to give the other shall be given in writing, delivered personally or sent by certified mail, postage pre-

paid, facsimile, or by Fed Ex or similar generally recognized delivery service regularly providing proof of delivery, addressed to a party, at the addresses set forth below, or to such other address as said party may hereafter or from time to time designate by written notice to the other party.

To Long Point:

Long Point Development, LLC
c/o Lowe Enterprises, Inc.
11777 San Vicente Blvd., Suite 900
Los Angeles, CA 90049
Attn: Robert J. Lowe, Jr.
Telephone: (310) 820-6661
Telecopier: (310) 207-1132

With a copy to:

Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Attn: Timi Anyon Hallem, Esq.
Telephone: (310) 312-4271
Telecopier: (310) 312-4224

and a copy to:

Lowe Enterprises, Inc.
11777 San Vicente Blvd., Suite 900
Los Angeles, CA 90049
Attn: Corporate Counsel
Telephone: (310) 820-6661
Telecopier: (310) 820-8131

To City:

City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275
Attn: City Manager
Telephone: (310) 377-0360
Telecopier: (310)

With a copy to:

Carol W. Lynch, Esq.
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Telephone: (213) 626-8484
Telecopier: (213) 626-0078

To Commission:

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Attn:
Telephone: (562) 590-5071
Telecopier: (562) 590-5084

With a copy to:

Notice by United States Postal Service or delivery service as provided herein shall be considered given on the earlier of the date on which said notice is actually received by the party to whom such notice is addressed, or as of the date of delivery, whether accepted or refused, established by the United States Postal Service return receipt or such overnight carrier's proof of delivery, as the case may be. Any such notice not so given shall be deemed given upon receipt of the same by the party to which it is addressed.

4.2 Mortgagee Protection. No portion of this Declaration or any amendment or violation thereof shall operate to defeat or render invalid, in whole or in part, the rights of the

beneficiary, insurer, guarantor, or holder of any mortgage or deed of trust encumbering any portion of the Property; provided that, after foreclosure of any such mortgage or deed of trust, the property foreclosed shall remain subject to this Declaration.

4.3 Governing Law. This Declaration shall be governed by the laws of the State of California.

4.4 Interpretation; Incorporation. This Declaration shall be interpreted to give each of the provisions their plain meaning. The Recitals and the exhibits attached hereto are incorporated into the Declaration.

4.5 Language Construction. Designations used herein are for convenience only and shall not be controlling in the interpretation of this Declaration.

4.6 Amendment. This Declaration may only be amended pursuant to a written amendment, executed by Long Point (or its successor or assign), consented to by City, and recorded in the Office of the Recorder of Los Angeles County, California.

4.7 Satisfaction of Conditions. City acknowledges and agrees that the execution and delivery of this Declaration fully and completely satisfies the Conditions.

4.8 Counterparts. The parties may execute this Declaration in counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it.

IN WITNESS WHEREOF, Long Point, City and Commission have executed this Declaration as of the date written above.

CITY:
City of Rancho Palos Verdes,
a municipal corporation

LONG POINT:
Long Point Development, LLC,
a Delaware limited liability company

applicant's option, be in the form of a separate excess insurance policy and may be issued by a non-admitted carrier so long as the insurer is authorized to do business in the State of California with a Best's rating of at least A-VII or a rating of at least A by Standard & Poor's and shall comply with all of the requirements of paragraphs a, b, d, e, f and g of this Condition 33.

COASTAL PERMIT NO. 166

- 32) All plans submitted to Building and Safety for plan check review shall identify the location of the Coastal Setback Line and the Coastal Structure Setback Line in reference to the proposed structure.
- 33) Except as provided herein as part of the Conditional Use Permit and Variance (allowing the construction of the Lower Pool Facility within the Coastal Setback Zone), pursuant to the RPVMC, no new uses or structural improvements shall be allowed in the area seaward of the Coastal Setback Line including, but not limited to, slabs, walkways, decks 6" or more in height, walls or structures over 42" in height, fountains, irrigation systems, pools, spa, architectural features, such as cornices, eaves, belt courses, vertical supports or members, chimneys, and grading involving more than 20 cubic yards of earth movement, or more than three feet of cut or fill.
- 34) All proposed structures within the Point Fermin Vista Corridor and Catalina View Corridor shall be constructed in accordance with the height limitations as identified in the City's Coastal Specific Plan and the project's certified EIR.

CONDITIONAL USE PERMIT NO. 215

Hotel Operations

- 35) A. The main hotel building and the freestanding bungalow units shall consist of no more than an aggregate total of 400 rooms (360 hotel rooms and 20 bungalow units, two keys per bungalow) and shall not be designed for multiple keys for a configuration exceeding 400 rooms. A main hotel room, for purposes herein, shall consist of any of the following: a typical guest room, a two-bay suite, one or more multiple-bay rooms with a single key, or a hospitality suite, as shown in Exhibit 7.14 of the Long Point Resort Permit Documentation dated June 23, 2000. Furthermore, the bungalow units shall consist of two-keyed accommodations with one or more bedroom areas which may contain a living room area as shown in Exhibit 7.15 of the Long Point Resort Permit Documentation dated June 23, 2000.
- B. A maximum total of 50 hotel suites and guestrooms may be sold to individual persons or private entities, subject to the following restrictions: An owner of a

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Exhibit B
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*Exhibit 4
A5. RPV. 02. 324-A5
Page 1 of 34 City's conditions
on conversions*

unit may utilize that unit for no more than sixty (60) days per calendar year, and no more than twenty-nine (29) consecutive days at any one time. A minimum seven (7) day period shall intervene between each twenty-nine (29) consecutive day period of occupancy by the owner. When not being used by the owner, the hotel suite or guestroom shall be available as a hotel accommodation, which shall be fully managed by the resort hotel operator. Deed restrictions to this effect, which are satisfactory to the City Attorney, shall be recorded prior to any sale of any unit. The 50 hotel suites and guestrooms that may be sold to individual persons or private entities will consist of a mix of single-key suites, suites with two-keys, and single-key guestrooms. The precise location and mix of these units shall be described in detail at the time the tract map is processed by the City, but in no event shall the number of keys exceed 66 keys.

- C. The bungalow units shall consist of no more than 20 bungalow units, with a maximum keying configuration of two (2) keys per bungalow unit resulting in a maximum possible 40 accommodations. The bungalow units may be sold to individual persons or private entities, subject to the following restrictions: An owner of a unit may utilize that unit for no more than sixty (60) days per calendar year, and no more than twenty-nine (29) consecutive days at any one time. A minimum seven (7) day period shall intervene between each twenty-nine (29) consecutive day period of occupancy by the owner. When not being used by the owner, the bungalow unit shall be available as a hotel accommodation, which shall be fully managed by the resort hotel operator. Deed restrictions to this effect, which are satisfactory to the City Attorney, shall be recorded prior to any sale of any unit.

(REVISED PER RESOLUTION NO. 2004-78 ON SEPTEMBER 7, 2004)

- 36) The casita units shall consist of no more than 50 casita units, with a maximum keying configuration of three (3) keys per casita unit resulting in a maximum possible 150 accommodations. The casita units may be sold to individual persons or private entities, subject to the following restriction: An owner of a unit may utilize that unit for no more than sixty (60) days per calendar year, and no more than twenty-nine (29) consecutive days at any one time. A minimum seven (7) day period shall intervene between each twenty-nine (29) consecutive day period of occupancy by the owner. When not being used by the owner, the casitas unit shall be available as a hotel accommodation, which shall be fully managed by the resort hotel operator. Deed restrictions to this effect, which are satisfactory to the City Attorney, shall be recorded prior to any sale of any unit.
- 37) The resort villa units shall consist of no more than 32 single keyed units. The resort villa units may be sold to individual persons or private entities, subject to

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Exhibit B
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Exhibit 4
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the following restriction: An owner of a unit may utilize that unit for no more than ninety (90) days per calendar year, and no more than twenty-nine (29) consecutive days at any one time. A minimum seven (7) day period shall intervene between each twenty-nine (29) consecutive day period of occupancy by the owner. The Villas shall be fully managed by the resort hotel operator when not used by the owners, and made available for rental by the general public. When not being used by the owner, the villa shall be available as a hotel accommodation, which shall be fully managed by the resort hotel operator. Deed restrictions to this effect, which are satisfactory to the City Attorney, shall be recorded prior to any sale of any unit.

(REVISED PER RESOLUTION NO. 2004-78 ON SEPTEMBER 7, 2004)

- 38) If any villa unit, casita unit, bungalow unit, hotel suite or guestroom is not sold or made available for sale, the unit shall be available as a hotel accommodation which shall be fully managed by the resort hotel operator.

(REVISED PER RESOLUTION NO. 2004-78 ON SEPTEMBER 7, 2004)

- 39) Any person or entity ("hotel guest") who pays the hotel operator for the privilege of occupying one or more rooms, bungalows, villas or casitas ("unit") shall not occupy or have the right to occupy any unit for more than twenty-nine (29) consecutive days. On or before the twenty-ninth day, the hotel guest shall be required to check out of the unit(s).
- 40) Prior to issuance of building permits for the resort villa units, casita units, bungalow units, and hotel suite or guestrooms that may be sold to individual persons or private entities, the following shall be completed:

- a) The applicant shall process a parcel map or tract map in accordance with the Subdivision Map Act.

(REVISED PER RESOLUTION NO. 2005-39 ON APRIL 19, 2005)

- b) Deed Restrictions, which restrict the use and operation of all of the privately owned units and are in a form that is acceptable to the City Attorney, shall be recorded against all of those units, including, without limitation, the bungalow units, resort villas, casitas and the fifty hotel guest suites or guest rooms.
- c) The City (or, at the City's election, the applicant) shall create a new non-profit corporation or shall expand the powers of an existing non-profit corporation to undertake the duties specified in this condition. The non-

Exhibit 4
A-5. RPV. 02. 324. A5
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Exhibit B
Page 10 of 40

profit corporation will be charged with spending its resources (net of its operating expenses) for only the following purposes: the maintenance, repair, replacement and enhancement of trails, parks, open space areas and streets within the City of Rancho Palos Verdes, which are owned in fee or by easement or by license by the City.

- d) The applicant shall record against all of the condominium owned units, including, without limitation, the bungalow units, resort villas, casitas and fifty hotel guest suites or guestrooms a Declaration of Covenants, Conditions and Restrictions and Notice of Transfer Fee. Such document(s) shall set forth the obligation to pay a 1% transfer fee upon each transfer of ownership of a unit, which 1% shall be assessed against the sale price for the unit. The transfer fee is not applicable on the initial sale from the master developer to the first owner. The fee shall be required to be paid through the escrow for the sale or, if no escrow is used, at the time of recordation of the deed transferring title. The fee will be paid to the non-profit corporation. The recorded documents shall provide a lien right in favor of the nonprofit corporation to secure the payment obligations and any costs of collection, including, without limitation, attorney's fees and court costs

(REVISED PER RESOLUTION NO. 2004-78 ON SEPTEMBER 7, 2004)

- 41) The Resort Hotel building, ancillary structures, including but not limited to the Lower Pool Facility, and all accessory buildings associated with the golf practice facility shall substantially conform to the plans approved by the City Council and stamped by the Planning Department with the effective date of this approval.
- 42) The public section of the Lower Pool Facility, which consists of public restroom facilities and a viewing deck area, as shown on the plans approved by the City Council on the effective date of the adoption of these conditions, shall be open and made available to the general public during City park hours, as specified in the RPVMC.
- 43) Approval of this conditional use permit is contingent upon the concurrent and continuous operation of the primary components of the project, which are the hotel, villas, casitas, banquet facilities, spa facilities, retail facilities, and the golf practice facility.
- 44) Prior to issuance of any Certificate of Occupancy, the use of gardening equipment for the golf practice facility and landscape areas shall be controlled by a Golf and Hotel Landscape Maintenance Plan which is subject to review and approval by the Director of Planning, Building and Code Enforcement, based on an analysis of equipment noise levels and potential impacts to neighboring

Exh. B 4
A 5-RPV-02-324 A5
Page 4 of 4

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Exhibit 5 A-5-RPV-02-324-A5

Exhibit 5 letter from SEC, Page 1 of 2

Intrawest will take the precautions necessary to ensure that its real estate sales personnel do not provide prospective purchasers with detailed rental information (and, in fact, only state that "Ownership may include the opportunity to place your home in a rental arrangement.") and that representatives of the rental management company only provide information in response to specific inquiry.

Intrawest expects to contract with one or more nationally known hotel chains, such as Marriott or Westin to provide rental management services due to their national presence and their reputation for providing high quality rental management services. If a purchaser inquires about rental opportunities, Intrawest will inform them that they are free to utilize the services of any rental management company and will not prevent or discourage owners from renting units themselves or utilizing the services of rental management companies with no affiliation with Intrawest.

A. Current State of the Law. The applicability of securities laws to condominiums with rental arrangements is well-established. Case law expounding on the characteristics of an "investment contract," one of the terms in the statutory definition of "security," leaves no doubt that under certain circumstances real estate offerings coupled with an agreement to provide rental or other services are included within such definition. The framework for most interpretations of the term "security" in this context was established by the Supreme Court in SEC v. W.J. Howey Co., 328 U.S. 293, *reh'g denied*, 329 U.S. 819 (1946). In Howey, the Supreme Court created the well-known "economic realities" analysis under which an interest will be classified as a security only if three elements are concurrently present: (i) an investment of money; (ii) in a common enterprise; and (iii) the expectation of profits solely from the efforts of the promoter or a third party. In reaching its decision, the Court emphasized that the term "investment contract" embodies a "flexible rather than static principle" and that "form was disregarded for substance and emphasis placed upon economic reality." Although, subsequent decisions have modified the third prong of Howey from "solely" to "substantially" from the efforts of a promoter or third party, such modification does not affect our analysis.

Building on Howey's premise that substance should not be disregarded for form when identifying the existence of a security, the Commission clarified in the Condominium Release its position regarding the application of the Howey test to offers of condominiums. In that release, the Commission stated that a condominium unit can be treated as a security if it is offered in conjunction with any of the following three factors: (i) emphasis on economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, from rental of the units; (ii) the offering of participation in a rental pool; or (iii) the offering of a rental or similar arrangement whereby the owner must hold his unit available for rental for any part of the year, must use an exclusive rental agent or is otherwise materially restricted in his occupancy or rental of his unit.

Intrawest will not discuss the terms of or agree to enter into rental management agreements with individuals until a purchase and sale agreement has been executed but may do so prior to the closing on the unit. The rental management agreements will be separate and distinct from

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the purchase and sale agreements and will be effective only if the sale is consummated. The negotiation and execution of a rental management agreement clearly separate from the purchase and sale agreement and following the execution of such agreement is consistent with the guidelines announced in the Condominium Release. In the Condominium Release, the SEC stated that "an owner of a condominium unit may, after purchasing his unit, enter into a non-pooled rental arrangement with an agent...whether or not such agent is affiliated with the offeror, without causing a sale of a security to be involved in the sale of the unit." The Staff has indicated that entering into a rental agreement after the purchase and sale agreement has been executed but before closing is unacceptable. See FC Beach Joint Venture (available May 29, 1998). Intrawest believes that so long as the rental agreement is not entered into prior to the execution of the purchase and sale agreement and the effectiveness of the rental agreement is conditioned upon the consummation of the sale, the proposed timing of the negotiation and execution of a rental management agreement, without more, does not create a security.

Owners will be free to use their units as a primary residence, a secondary residence or as a vacation home available for their personal use throughout the year. Those owners desiring to obtain rental revenue from their unit may rent the units themselves or utilize the services of a rental management company of their choice. The decision to utilize a unit as an investment property is completely within the discretion of the owner. Owners choosing to utilize Intrawest's rental management services will be required to enter into agreements, the terms of which have been described above. The voluntary nature of the rental program and the existence of only reasonable restrictions on an owner's ability to occupy his, her or its unit or units is consistent with the limitations set forth in recent Staff no-action letters. See FC Beach Joint Venture (available May 29, 1998); Diamond Cove Associates (available September 27, 1990).

To: California Coastal Commission

cc: Peter Douglas
Deborah Lee
Pam Emerson
Robert J. Lowe
Robert J. Lowe, Jr.

From: Timi A. Hallem

Date: April 26, 2006 File No.: 25366-030

Subject: Terranea/Long Point Resort – CDP A-5-RPV-02-324

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Applicant's Summary
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This memo will describe how the management and control of the condominiums at Terranea has been structured to ensure unimpeded public access to the resort, its rooms, and the public amenities being constructed as part of the resort.

Terranea consists of 582 rooms, of which 294, a large coastal hotel standing on its own, will still be owned by the hotel owner if the pending application is approved. The balance of the rooms will be included within either the “already-approved as condominiums” Villas and Casitas, or the “applied-for as condominiums” bungalows and hotel units.

With the exception of the interior space of the condominium units approved by the Commission for sale to individual owners, the resort will be owned by the developer and its successors, including all 3 restaurants, all meeting spaces, lobbies, spa and fitness facilities, pools, and all public and “back of house” facilities, as well as all of the landscaped areas of the project. In fact, the condominiums at Terranea consist **only** of the interior space within each designated unit.

Management of all buildings and all exterior areas of the grounds is controlled by the hotel owner and its designated operator (“Operator”). The condominium owners (“Owners”) have easements which give them only the same rights to use the public areas at the resort as are afforded to any member of the public who stays at Terranea.

Owners and hotel guests, as well as members of the public, will have access to the new public park, extensive trails, handicapped beach access trail, lookout points, benches, restaurants and other public amenities being constructed at the hotel. The park and trails will be dedicated to the City of Rancho Palos Verdes (“City”) as part of the development of this unique project.

Each Owner will buy her/his condominium subject to restrictions which mirror the language of the Special Conditions adopted by the Commission restricting Owner occupancy. The units which are requested in the pending application are limited to Owner use of not more than 60 days per year, and no more than 29 consecutive days of Owner use, with a minimum 7 day period between 29 day periods of Owner use. The restrictions are enforceable by the Commission, the City, the hotel owner and the Operator.

The restrictions provide that all units must be managed by the Operator and must be available as a hotel accommodation when not being used by their Owners during the very limited periods allowable for Owner use. The restrictions provide further that **the Operator shall have the right to book any unbooked room to fulfill hotel room demand**. This is crucial to the Operator and the hotel owner, as all of the public and “back of house” facilities at the hotel have been “sized” on the assumption that there are 582 rooms available for booking by the public. These facilities includes 60,000 square feet of new conference/banquet space, a 25,000 square foot spa/exercise facility, and a publicly-available golf facility, all of which will require that the Operator be able to book rooms to maintain hotel occupancy and therefore full use of the resort facilities.

Pursuant to the recorded restrictions, each Owner must enter into a Unit Management Agreement with the Operator which both permits and requires the Operator to maintain and manage each condominium unit for the benefit of (and at the cost of) its Owner. The Agreement requires that the Owners maintain their units at the quality standard set by the hotel, and provides reserves adequate to replace the furniture, fixtures and equipment within the units on the schedule maintained by the Operator for the hotel. Owners may not maintain any personal belongings within the units and must keep them for all purposes looking like the balance of the resort units. Since the buildings and landscaped areas are owned by the resort owner, they will automatically be maintained by the Operator.

Because occupancy at even the most successful hotels rarely exceeds 75-78%, and because experience at other condominium resorts shows that owner occupancy is typically less than 30 days per year, and in most instances less than 2 weeks a year, Owner use should simply mean that more members of the public are staying at the resort and enjoying access to the coast. The condominium use by Owners is so circumscribed, and unit management so controlled, that the fact that the ownership of the units is in the form of condominiums will not be visible to the public and cannot in any way impede the ability of the public to book a room at Terranea, nor the ability of members of the public not staying at the hotel to enjoy this remarkable facility.